HOUSING AND TOWN PLANNING ACT. 1909.

.. .. Housing, ... Town-Planning, &c., Act, 1909.

Order of the Local Government Board,

Dated 2nd September, 1910,

Prescribing Regulations under Sec. 17 (1)

---

	s.	d.
Copies of the Order, including the covering Circular, per doz.	1	6

ARTICLE I. (3).

A. **List of Dwelling Houses,** the early inspection of which is, in the opinion of the Medical Officer of Health, desirable. To be prepared by the Medical Officer of Health, or by an officer acting under his direction and supervision.

Made up in books to contain the requisite number of entries (*e.g.* 100, 200, and so on).

ARTICLE II.

B. **Pocket Book for the use of Inspecting Officer,** containing the necessary headings to enable the requisite particulars to be recorded at the time of the inspection, price 2 0

ARTICLE III.

Record of Inspection of Dwelling-houses—

C. In **Book Form,** with the necessary headings.
Price: 100 folios, 8s 6d.; 200 folios, 10s. 6d.; 300 folios, 12 6

Do. **Loose Sheets,** punched for fixing in loose leaf binder.
Per 100, 5s. 6d.; 200, 10 0

BINDERS for holding loose sheets - - - - - - 10 6

D. **Cards,** 10in.×6in., with all necessary particulars printed thereon in regard to each house inspected.
Per 100, 2s. 6d.; 500, 11 0

CABINETS for holding Cards (about 500) - - - - - 7 6

ALPHABETICAL GUIDE CARDS - - - - Per set, 2 0

BLANK GUIDE CARDS, upon which the names of Streets, &c., can be written - - - - - - - - Per 100, 4 0

N.B.—The Order suggests that the Record of Inspection of Houses shall be kept in one or other of the three Systems mentioned above.

LIST OF FORMS, NOTICES, ORDERS

and other documents for the purposes of the Housing of Working Classes Act, 1890, and the Amending Acts, including the **Housing, Town-Planning, &c., Act, 1909,** *prescribed by the Local Government Board, pursuant to Section 41 of the last-named Act, by their Order dated 11th January, 1910.*

No. of Form.		
1	*Notice of intention to Enter and View Premises	sect. 15 (2)
1*	Authority to Enter and View Premises	,, ,, (2)
2	*Notice to Landlord to Execute Works	,, ,, (3)
3	*Notice of intention to Close House	,, ,, (4)
4	*Order for Payment of Expenses by Instalments	,, ,, (5)
4*	Notice to comply with Bye-laws	,, 16 (1)
4**	Notice of intention to Execute Works	,, ,, (3)
5	*Closing Order	,, 17 (2)
5*	Notice of making of Closing Order	,, ,, (3)
5**	Closing Order } Underground Rooms	
5***	Notice of making Closing Order } Underground Rooms	
6	*Notice of Closing Order having become Operative	,, ,, (4)
7	*Order determining Closing Order	,, ,, (6)
8	*Notice of Refusal to determine Closing Order	,, ,, (6)
9	*Notice of Time and Place for considering Demolition	,, 18 (1)
10	*Demolition Order	,, ,, (2)
11	*Demolition Order for part of House	,, ,, (2)
11*	Undertaking by Landlord to execute Works	,, ,, (2)
12	*Order postponing operation of Demolition Order	,, ,, (3)
13	Notice of Demolition Order	,, ,, (4)
14	Certificate for Exemption from Inhabited House Duty	,, 35
15	Authority to enter Premises for Survey, &c.	,, 36
16	Notice of intention to enter Premises for Survey, &c.	,, ,,
17	Certificate of Medical Officer of Health to Local Authority, that House is unfit for Human Habitation	In Books of 50 each, 4/6
18	Advertisement of an Improvement Scheme	
19	Notice to Owner or reputed Owner, Lessee or reputed Lessee, of Intention to take Lands compulsorily under an Improvement scheme	
20	Notice to Occupier or Occupiers (not being Owners or reputed Owners, or Lessees or reputed Lessees) of Intention to take Lands compulsorily under an Improvement Scheme	

* Prescribed Forms.

3/- per Quire.

Any of the above can be had in BOOK FORM with Counterfoil, or for use with Carbon Paper if preferred.

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KNIGHT'S REGISTERS.

For use in carrying out the Provisions of Part I. of the above Act.

No. 1.—Register of Grant of Charges, 50 folios, 10/6. No. 2.—Register of Closing Orders, 50 folios, 10/6; 100 folios, 14/-. No. 3.—Register of Demolition Orders, 50 folios, 10/6; 100 folios, 14/-. No. 4.—Combined Register, made up as follows:—10 folios Grant of Charges; 40 folios Closing Orders; 10 folios Demolition Orders, price 15/-

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THE HOUSING, TOWN PLANNING, &c., ACT, 1909

THE HOUSING, TOWN PLANNING, &c., ACT, 1909

(9 EDW. VII. Ch. 44),

With Incorporated Provisions of the Housing Acts, and all Orders issued by the Local Government Board, together with full Explanatory Notes and Index

THIRD EDITION

By

WILLIAM A. CASSON

BARRISTER-AT-LAW OF THE SOUTH-EASTERN CIRCUIT

Author of "Annotated Model Bye-laws" (7th Edition), the "Education Act, 1902," and other works

LONDON

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PREFACE TO THIRD EDITION

The first edition of this book was got out very hurriedly and was necessarily very imperfect, but it served the purposes for which it was intended, namely, to place the text of this new and interesting statute in the hands of local authorities together with such explanatory notes as could be prepared at the time. The second edition was practically a reprint of the first, and the fact that both editions have long since been out of print showed that there was a considerable demand for the work. To meet this a third edition has been prepared in which all the notes have been carefully revised, rewritten, and amplified, the incorporated provisions of the Housing of the Working Classes Act, 1890 (except the first part relating to unhealthy areas), as well as the Acts of 1900 and 1903, and all the regulations issued by the Local Government Board up to the time of going to press have been included. I am confident that this book will be of assistance to local authorities on the one hand and to owners of property and their advisers on the other, for it has been my endeavour to foresee and deal with points of difficulty in practice as well as questions of interpretation which arise on the construction of many of these enactments. In regard to town planning I have not confined the notes to questions of law, and have discussed those novel enactments from a general standpoint with a view of rendering as much assistance as possible to persons engaged in the new art of town planning. These functions, if properly exercised, must be to the advantage of the community. The Local Government Board say in their circular that:

"The object of the Town Planning Part of the Act is to "ensure, by means of schemes which may be prepared either "by local authorities or landowners, that in future land in "the vicinity of towns shall be developed in such a way as "to secure proper sanitary conditions, amenity and con-

" venience in connexion with the laying out of the land itself " and of any neighbouring land.

" Hitherto the conflicting interests of different owners and " the absence of any power in the local authority to guide " and control development according to the circumstances " and requirements of particular cases has resulted to a con- " siderable extent in the development of estates, whether " large or small, with a sole regard to the immediate interests " of the particular estate and without regard to the amenity " and convenience of neighbouring lands."

The Board add that they " trust that councils in whose " districts signs of development are visible will give very " full consideration to the opportunities which the Act " offers of guiding and controlling that development for " the benefit of the community, and that in doing so they " will bear in mind the heavy burden which has fallen on " the ratepayers of many districts in the past in remedying " defects of the kind which it is now within their power to " prevent."

I have to acknowledge with gratitude the very able assistance that I have received in the preparation of this work from Mr. Athelstan Ridgway, LL.B. (Lond.), Barrister-at-Law, whose assiduous labours have very largely contributed to make many of the notes on the various sections of the Act exceptionally valuable from an administrative point of view.

WILLIAM A. CASSON.

1, Essex Court, Temple,
January 1, 1912.

INTRODUCTION

THE Housing and Town Planning, etc., Act, 1909, is really two Acts in one chapter, for it is divisible into two well-defined and only indirectly related matters—the housing of the working classes and the planning of towns. The Legislature has never until now attempted in any way to touch the subject of town planning, but for more than half a century it has been endeavouring to deal, and has dealt more or less effectively, with the housing of the working classes. The first Acts that were passed relating to these matters were the Labouring Classes Lodging Houses Acts, 1851 and 1866, and following these were other sets of statutes, known as Shaftesbury's Acts, Torren's Acts and Cross's Acts. Shaftesbury's Acts were adoptive and were actually adopted to such a slight extent that the Earl of Shaftesbury, their author, in his evidence before the Royal Commission on the Housing of the Working Classes in 1884—a Commission of which His Majesty the late King Edward VII was a member—said that the Acts appeared to have been totally forgotten and that at that time he doubted if there was any man living besides himself who knew that they existed. Torren's Acts and Cross's Acts involved a costly and complicated machinery to bring them into operation, and it was not until the report of the Royal Commission was acted on and the Housing of the Working Classes Act, 1885, was passed that any effective measures were taken to put an end to the slums that had for so long a time existed in so many parts of our great cities. The consolidation of the law in the Housing of the Working Classes Act, 1890, coupled with the creation of county councils by the Local Government Act, 1888, gave an impetus to measures designed to put an end to some of the grave scandals that had too long existed in connexion with the homes of the labouring classes. Under the Act of 1890 it was permissible to local authorities to adopt and put in force certain powers which would enable them to clear their districts of unhealthy

dwellings and to erect other dwellings for the working classes. A constant struggle has been proceeding during the past quarter of a century between the advocates of private enterprise and of municipal activity, and it has been repeatedly urged that landowners and builders will in their search after profits provide all the dwellings that the people need. That this proposition is true of certain localities cannot be doubted, but there are many places of which it is not true, and for that reason the Legislature has had the conclusion forced upon it that where private enterprise is unwilling or unable to provide the dwellings that are needed the local authority must in the interests of the general health of the community be permitted to step in and make such provision as is needed. From the passing of the Act of 1890 until the Act of 1909 came into force Parliament has made a few weak but ineffectual attempts to grapple with this question by increasing the facilities for the acquisition of land and by extending the periods during which borrowed moneys could be repaid, but no attempt had been made to deal firmly and effectively with those owners of unhealthy dwellings who were able to exact rack rentals for bad houses or with those owners of land who declined to part with it for building purposes. The Housing and Town Planning, etc., Act, 1909, was designed to remedy both these defects. Mr. John Burns, the President of the Local Government Board, who had charge of this measure during all its stages through the House of Commons, said :—

"The object of this Bill is to provide a domestic condition "for the people in which their physical health, their morals, "their character and their whole social condition can be "improved by what we hope to secure in this Bill. The "Bill aims in broad outlines at, and hopes to secure, the home "healthy, the house beautiful, the town pleasant, the city "dignified, and the suburb salubrious. It seeks and hopes "to secure more homes, better houses, prettier streets, so "that the character of a great people, in towns and cities, "and in villages, can be still further improved and strengthened by the conditions under which they live. . . . On "its housing side the Bill seeks to abolish, reconstruct, and "prevent the slum. It asks—at least, I do for it—the House "of Commons to do something to efface the ghettos of meanness, and the Alsatias of squalor that can be found in many "parts of the United Kingdom. It hopes to take effective "steps to put down many of the unpleasant features of our

" purely industrial towns. It hopes to render model dwell-
" ings similar to those that are so prevalent in Germany less
" frequent in the future than now. I believe that model
" dwellings, like model men, are too often jerry-built struc-
" tures, unsuited to purely British conditions, and ought
" not to be extended or added to. The Bill seeks to diminish
" what have been called byelaw streets, with little law
" and much monotony. It hopes to get rid of the regulation
" roads that are so regular that they lack that line of beauty
" which Hogarth said was a curve. It seeks to improve the
" health of the people by raising the character of the house
" and the home, and by extended inspection, supervision,
" direction and guidance of central control to help local
" authorities to do more than they do now."

The Legislature had realized that the effects of over-crowding and bad housing reacted on the community at large by increasing the rate of sickness and mortality and it accepted Mr. Burns's Bill as the inevitable alternative after all other methods had been tried and had failed. The two great features of this new legislation are the firmness with which it deals with unhealthy dwellings and the facilities that it affords to local authorities for and the obligations it imposes on them of providing suitable housing accommodation both in urban and rural districts for the working population.

Part I. of the Act forms part of the Housing of the Working Classes Acts, 1890 to 1909. The principal objects of those Acts may be classified broadly under three heads: (1) The improvement or clearance by the local authority of unhealthy areas by means of improvement or reconstruction schemes or the removal of obstructive buildings; (2) The enforcement by the local authority of the removal by owners or landlords of defects which render dwelling-houses so dangerous or injurious to health as to be unfit for human habitation, or cause houses not to be reasonably fit for human habitation; (3) The provision by the local authority of houses for the working classes. The amendments made by Part I. of the Act of 1909 simplified the procedure necessary under the earlier Acts for securing those objects; and the records of work done by local authorities since the passing of the Act undoubtedly show increased efforts on the part of local authorities and their officers to promote the objects.

The first amendment which the Act makes is to put in force in every district throughout the country the powers of Part

III. of the Housing of the Working Classes Act, 1890, thus superseding the previous law under which that part of the Act could only be put in force by being adopted, and it could not be adopted by any rural district council except with the sanction of the county council. These powers relate to the provision of dwellings by a council and they permit of the erection of such a number of dwelling-houses as may be needed in any district for the accommodation of people desirous of living there. The Act accordingly provides not only for the permissive provision of dwellings but it goes further and imposes on every council the obligation to make such provision in the way of dwelling-house accommodation as may be needed. The Act provides that parish councils and parish meetings, as well as inhabitant householders, may make complaints against rural district councils and county councils and inhabitant householders may make complaints against urban district councils to the Local Government Board that these bodies have failed to exercise their powers under the Act and the Board may hold a local inquiry and make an Order which will be enforceable by *mandamus* of the High Court of Justice directing any council to carry out any works or do any other thing which may be necessary. In the case of rural districts there is a further provision which enables a county council in any case where a rural district council fails to exercise its powers under the Act to resolve that those powers be transferred to the county council who thereupon may act as if it were the rural district council. The powers of the Local Government Board are very extensive and enable the department to compel local authorities to carry out their duties and to fix a limit of time during which the necessary works are to be executed.

Some very important alterations are made in the law as to the obligations of landlords to keep premises in a proper condition, for it is provided that in every contract made after the passing of the Act for letting for habitation a house or part of a house at certain rentals specified in the Act there shall be implied a condition that the house is in all respects reasonably fit for human habitation and is so kept reasonably fit during the whole of the tenancy. There are certain provisions for securing compliance with and the enforcement of this condition.

One of the most important groups of sections in the new Act relates to the closing of dwelling-houses that are found

to be unfit for human habitation. The Act imposes on every local authority the duty of making an inspection of its district from time to time with a view of ascertaining whether any dwelling-house therein is in a state so dangerous as to be unfit for human habitation. The Local Government Board have issued special regulations prescribing the way in which the duties are to be carried out, and if on the representation of the medical officer of health or of any other officer, or by means of other information given to them it appears to a local authority that any dwelling-house is unfit for human habitation the duty is imposed on them of making a closing order prohibiting its further use. On the making of such an order all the occupants are required to leave the house, and unless it is rendered fit for human habitation the closing order after remaining operative for three months will be followed by a demolition order unless the owner shows that he is taking all necessary steps to render the house fit for habitation and undertakes to execute forthwith all necessary works. In such a case the operation of the closing order may be extended for a period of six months to enable the works to be carried out, but if the local authority considers that it is impossible to render the house fit for human habitation they must exercise the powers vested in them under the Act of 1890 and proceed to take down and remove the building. These drastic measures are now being widely taken in respect of houses unfit for habitation all over the country and the advantage of the simplification of procedure is being generally taken advantage of. Side by side with the demolition of uninhabitable buildings steps are being taken to provide fresh accommodation. In explaining to the House of Commons the steps that had been taken under the new Act Mr. John Burns during the session of 1911 stated " that in 1908–9 before the Act came into operation, closing orders—which afforded a test of the activity of local authorities in dealing with houses that were unfit for habitation—were made in regard to 587 houses. In 1909–10 the number of closing orders was 1,511, and in 1910–11 the number was 2,678. Those results were very satisfactory indeed, and justified expectations as to what it would be possible to do under the Act. The speed with which closing orders would be made would be accelerated as the local authorities warmed to their work and knew more of the means by which this branch of it could be carried out. In 1908–9 representations as to houses which were not in

proper repair were made in 6,312 cases; in 1910–11 the number of such representations was 10,796. The increase took place mainly in urban districts, but rural districts showed a substantial improvement. Under section 15 of the Act 12,900 houses had been dealt with and 392 had been closed. Of the 12,900 houses 4,540 were in rural districts, and that number showed a tremendous increase upon the totals in former years. The loans sanctioned for the erection of dwellings for the working classes in urban areas during the six months ended June, 1910, amounted to £47,000, and in the six months ended June, 1911, to £132,000, showing most satisfactory progress. From rural areas during the six months ended June, 1910, no applications for loans were received; while in the corresponding half of the present year there had been applications for loans amounting to £9,625. There had been rapid progress, but he wanted an acceleration of that progress, and he appealed to hon. members who represented mining constituencies, and he referred especially to Durham, Northumberland, and the mining parts of Wales, to help to stimulate local authorities to put their housing into better condition. Closing orders and demolition of houses here and there were not sufficient measures. All over the United Kingdom there were opportunities in rural and urban areas for securing the erection of thousands of cottages, and he knew no form of social activity that would do more good than could be done by private individuals availing themselves of the Act. Failing private effort, local authorities should take up the work. He suggested to those generous people who spent money on public libraries and similar objects that their expenditure would be devoted to a much better purpose if they would send their money to him (laughter), and he would be pleased to devote it to rural and urban housing or to the creation of small parks, gardens, and open spaces in the poorer districts of large towns. Used in that way the money would do more good than libraries of doubtful fiction.

"The progress made in town planning exceeded his most sanguine expectations. Regulations had been issued for four large schemes of town planning which were now in process of realization. At this moment about 70 schemes had either been sanctioned or were being prepared or considered by the various local authorities."

The Town Planning part of this Act will no doubt in course of time be repealed and adopted as the basis of some entirely

new legislation dealing with town planning in a more drastic and stringent manner than is the case at present. Town planning schemes are an entirely new thing in this country, and it is not surprising therefore to find that the Act proceeds very cautiously in interfering with the independence of landowners and builders; but it is now generally recognized that the time has come when the State should step in and prevent a repetition of the many errors of former generations in regard to the construction of towns. Up to the present the only interference which the law has sanctioned in the case of building schemes has been that imposed by bye-laws which regulate the width and mode of construction of streets and the materials of buildings; but except in those cases where special local Acts are in force local authorities have been powerless to prevent the construction of streets which were not satisfactory in their situation or direction, and the result has been that many large towns have been surrounded with ill-constructed suburbs. The object of the adoption of town planning schemes is to give very comprehensive powers to a local authority to prescribe in what way certain areas likely to be built upon shall be laid out for building. The Act goes further and enables a local authority to deal with existing streets and to prevent their being built on except in certain prescribed ways, so that if properly used the powers of this Act can be invoked to prevent a repetition of that grievance to which so many large towns have been subjected, namely, the erection of buildings along narrow old highways on the outskirts of their district, thus involving enormous expense for widening at some future time. We are only at the commencement of the application of the new law as to town planning and it would be well for local authorities not to expect too much of the new Act.

The Local Government Board have recently issued an interesting Memorandum [Cd. 5953], dated November 9, 1911, as to the operation of the Housing, Town Planning, etc., Act, 1909, and of the earlier Housing Acts as commended by that Act, from which I quote the following passages :—

"A primary duty of the local authority in relation to "housing is the systematic inspection of their district. This "general duty is imposed on local authorities outside London "by the Public Health Act, 1875 (section 92), 'with a view "'to ascertain what nuisances exist calling for abatement "'under the powers of this Act and to enforce the provisions

" 'of this Act in order to abate the same.' A similar obliga-
" tion is laid on local authorities in London under section 1
" of the Public Health (London) Act, 1891. The duty of
" inspection of dwelling-houses in particular is emphasized
" by the Act of 1909 (section 17). This inspection is to be
" made with the view of ascertaining whether any dwelling-
" house is in a state so dangerous or injurious to health as
" to be unfit for human habitation. This duty was imposed
" by section 32 of the Housing of the Working Classes Act,
" 1890, but it is supplemented by the Act of 1909 so as to
" require that the inspection shall be carried out and records
" thereof kept in accordance with regulations to be made
" by the Local Government Board. Regulations have
" been made by the Board and they require definite arrange-
" ments to be made by the local authority for a thorough
" inspection to be carried out from time to time according
" to the varying needs or circumstances of the dwelling-
" houses or localities in the district of the local authority, the
" keeping of records as to the condition of each house in-
" spected in regard to specified matters which may affect
" the health of the inhabitants, the periodical submission
" of such records to the local authority for directions as to
" the action to be taken, and the inclusion in the Medical
" Officer of Health's Annual Report of a statement of the
" work of inspection and of the action taken in regard to the
" houses inspected.

" These regulations have been little more than a year in
" operation, but the information before the Board goes to
" show that in most districts the necessary arrangements
" have been made for giving effect to them. The Board
" have in correspondence with local authorities in the past
" year urged the importance of strict compliance with the
" regulations.

" In large and populous areas the work of inspection will
" of necessity extend over a considerable period, but the
" regulations contemplate that houses or areas regarded as
" most in need of inspection should be dealt with first."

" By section 14 of the Act it is provided that, subject to
" certain exceptions, in any contract made after the passing
" of the Act for letting for habitation a house or part of a
" house at a rent not exceeding (*a*) £40 in London, (*b*) £26
" in provincial boroughs or urban districts with a population
" of 50,000, and (*c*) £16 elsewhere, there shall be implied

" a condition that the house is at the commencement of the " holding in all respects reasonably fit for human habitation. " Under section 15 of the Act, the condition implied by section " 14 is extended so as to include an undertaking that the " house shall, during the holding, be kept by the landlord " in all respects reasonably fit for human habitation. The " obligation so created, which is new to housing legislation, " is enforceable by the local authority who are given special " powers of entry by the section to inspect any house to " which section 15 applies, and, where they find the implied " obligation not complied with, to serve notice on the land- " lord requiring him to execute such specified works as they " may think necessary to render the house reasonably fit for " habitation. The landlord has a right to appeal to the Local " Government Board within 21 days after receipt of the " notice ; but, subject to this, he must carry out the works " required and in default of his doing so, the local authority " are empowered to execute the works at his expense."

The powers of this section have been extensively utilized by some local authorities as the figures in a table which is included in the Memorandum show. From these it appears that about four hundred local authorities have taken action under the enactment.

Probably the most important provisions of the Act so far as Housing is concerned are sections 17 and 18 which relate to the more drastic procedure of closing and demolition orders for dealing with those dwelling-houses which are represented to the local authority to be " in a state so dan- " gerous or injurious to health as to be unfit for human habi- " tation." The Local Government Board point out that :

" Closing and demolition orders were a part of the pro- " cedure authorized by the Housing of the Working Classes " Act, 1890, but whereas under that Act a closing order " could only be made by a Court of Summary Jurisdiction " on the application of the local authority, the power to " make such an order is by the Act of 1909 entrusted to the " local authority, subject to a right of appeal to the Local " Government Board by any owner of the dwelling-house " in respect of which the order is made.

" If the house is rendered fit for habitation after the closing " order is made, the local authority are required to determine " the order ; but, failing this, they are authorized, on the " expiration of a prescribed period after the closing order has

" become operative, and after hearing the owners, to make " an order for the demolition of the house on the grounds " referred to in section 18 (2). Any owner aggrieved either " by a refusal of the local authority to determine a closing " order, or by the making of a demolition order, may appeal " to the Local Government Board.

" Many local authorities have made substantial use of " their new powers, and it may reasonably be inferred that " these powers have enabled local authorities to deal more " readily with property unfit for human habitation than was " practicable under the earlier procedure."

As regards the provision of dwellings by local authorities the Local Government Board point out that :

" The Act of 1909 conferred important additional powers " on local authorities for the acquisition of land and the " construction of houses for the working classes. Part " III. of the Act of 1890 (which embodies the substantive " powers of a local authority to this end) is now by virtue " of the Act of 1909 in force in every district and does not " require to be formally adopted by an urban authority or " to be adopted, with the consent of the county council, by " a rural district council. Moreover it has been made possible " for local authorities to borrow money from the Public " Works Loan Commissioners on more favourable terms " than formerly. Where a loan sanctioned by the Board is " advanced by the Public Works Loan Commissioners, it is " under section 3 of the Act of 1909 to be made at the mini- " mum rate of interest allowed at the time for loans out of " the Local Loans Fund, and it may also be advanced for " the full period sanctioned by the Board. The present " minimum rate of interest being $3\frac{1}{2}$ per cent., the annual " charge for both the repayment of the principal of the loan " and the payment of interest would amount approximately " to $3\frac{3}{4}$ or 4 per cent. according as the loan is repayable within " 80 years or 60 years.

" That the Act of 1909 has been of material assistance " and has proved an incentive to local authorities in providing " houses for the working classes is shown to some extent by " the increase in the number of local authorities who have " undertaken the provision of such houses."

It is frequently alleged that local authorities are in default and the new Act makes the Local Government Board the tribunal of appeal in the case of all such complaints.

The Board have regarded themselves as concerned to obtain as complete information as possible in regard to the conditions of housing in every district. This is secured (*a*) primarily from the annual reports of the medical officers of health, both local and county, and (*b*) from the inspections made from time to time by the Board's medical inspectors as a part of their investigations into the sanitary conditions of particular districts, and (*c*) from complaints made by individuals or groups of inhabitants as to the unsatisfactory conditions in their districts.

The Board state that :—

" Complaints as to local conditions reach the Board from " a variety of districts. A large number refer to grievances " not of a very general character, and these where practicable " are dealt with by correspondence. For certain formal " complaints of a graver character the Act of 1909 supplies " a definite remedy. Section 10 has already been referred " to in so far as it confers powers on county councils to com- " plain to the Board. A parish council of a parish in a rural " district or four inhabitant householders of any district " may also complain to the Board under the section. The " Board have received several complaints of this nature, " but usually they have not been of so definite a character " that they could be dealt with as formal complaints under " the section. In some cases correspondence on the matter " with the local authority alleged to be in default has sufficed " to secure action to remove the cause of complaint. In " some other cases the Board have directed local inquiries. " In no case hitherto has a formal order of default been made, " but in one case, that of a rural district council, in which the " Board after inquiry were prepared to make an order de- " claring the district council in default, the council undertook " to comply with the Board's requirements."

Town planning is the new subject with which this Act deals, and as I have already pointed out the subject is quite distinct from the provisions as to housing and may at some future date form the basis of separate and more comprehensive legislation. The Local Government Board say that these new powers are very extensive and their application to the circumstances of different localities must naturally be the subject of careful consideration.

" The Act, while creating a new relationship between " owners and local authorities in connexion with the develop-

" ment of land, contemplates the co-operation of one with " the other for the purpose of promoting the general interest. " Co-operation and agreement are important features in " connexion with the preparation of any town planning " scheme, which is to be both successful and economical, and " it follows that in many cases much time will be necessarily " absorbed in negotiations preliminary to the stage at which " formal application is made for the Board's approval of the " preparation of a scheme. Abundant evidence is forthcom- " ing, as to the widespread interest which is taken in the " subject. The many conferences which have been held by " local authorities, architects, engineers, surveyors, etc., " and the holding of public meetings in various localities, all " testify to this fact ; and looking to the novel character of " the legislation and the procedure under it the Board may " regard the progress hitherto made under it with satisfaction.

" Some information is given below as to a number of local " authorities who have taken definite action with a view to " the preparation of schemes under the Act, and there is " reason to believe that in some cases better methods of " developing estates are being adopted by landowners and " others without the formalities of town planning schemes, " and that the existence of the powers of the Act has already " had a very beneficial influence quite apart from the actual " preparation of schemes under it."

Section 54 (2) of the Act provides that the Board may authorize a local authority to prepare a town planning scheme, and in the following eight cases the Board have given authority for the preparation of schemes, viz. :—Birmingham Corporation, Ruislip-Northwood U.D.C., North Bromsgrove U.D.C., Rochdale Corporation, Chesterfield Corporation, Oldbury U.D.C., and Bournemouth Corporation.

In one case, that of an application from the Corporation of Rochester relating to a very small area, the Board were unable to give the authority asked for as the land was for the most part held by the Secretary of State for War, and being Crown lands could not be included in a town planning scheme.

Before an application can be made to the Board for authority to prepare a scheme, or to adopt a scheme prepared by owners certain procedure under the procedure regulations above referred to must be taken, including the giving of notices to persons interested and the holding of a preliminary conference with such persons. The Board have information

showing that the preliminary notices have been given under the regulations by the following eleven local authorities with a view to application being made to the Board for authority to prepare or adopt schemes, viz. :—Barrow-in-Furness Corporation, Ellesmere Port and Whitby U.D.C., Finchley U.D.C., Huddersfield Corporation, Middleton Corporation, Nelson Corporation, Newcastle-upon-Tyne Corporation, Sheffield Corporation, Sutton Coldfield Corporation, Twickenham U.D.C., and Willesden U.D.C.

As regards the case of Middleton the proposal is one for the adoption by the local authority of a scheme prepared by the owner. The matter has been before the Board, but certain further procedure was necessary before the proposal could be regarded as a formal application for authority to adopt the scheme.

In twenty-two other cases the information available would seem to show that the consideration of the matter by the local authority has reached a stage practically equivalent to a decision to proceed with a scheme, viz. :—Acton U.D.C., Barnes U.D.C., Beckenham U.D.C., Blackburn Corporation, Cleckheaton U.D.C., Croydon R.D.C., Greenford U.D.C., Grimsby R.D.C., Halifax Corporation, Hayes U.D.C., Kingston-upon-Hull Corporation, Maldens (The) and Coombe U.D.C., Merton U.D.C., Middlesbrough Corporation, Portsmouth Corporation, Sedgley U.D.C., Southall-Norwood U.D.C., Southport Corporation, Stockport Corporation, Surbiton U.D.C., Walthamstow U.D.C., and Warrington U.D.C.

In numerous other cases the Local Government Board are aware either from correspondence or interviews with their officers that the question of preparing a scheme is under consideration, and the following twenty-eight local authorities may be mentioned in this connexion :—Birkenhead Corporation, Bushey U.D.C., Carshalton U.D.C., Coventry Corporation, Croydon Corporation, Enfield U.D.C., Epsom U.D.C., Esher and the Dittons U.D.C., Hale U.D.C., Hendon U.D.C., Herne Bay U.D.C., Hessle U.D.C., Irlam U.D.C., Leek U.D.C., Little Crosby U.D.C., Newport (Mon.) Corporation, Northwich U.D.C., Richmond (Surrey) Corporation, Rotherham Corporation, Southgate U.D.C., Stoke-on-Trent Corporation, Stretford U.D.C., Sutton (Surrey) U.D.C., Tynemouth Corporation, Wakefield Corporation, Wallsend Corporation, Wembley U.D.C. and York Corporation.

There will doubtless be many town planning schemes pro-

moted by local authorities, and the Local Government Board has made provision by the issue of regulations directing the course of procedure in certain matters, and it should not be forgotten that there is a section of the Act which enables the Local Government Board on a representation being made to them and after holding a public local inquiry to direct the local authority to submit for their approval a town planning scheme for any area. Thus if it is anticipated that any estate is likely to fall into the hands of the speculative builder it will be open to anyone to invoke the aid of the local authority and in default of action on their part to appeal to the Local Government Board with the object of enforcing a town planning scheme for the development of such land. Local inquiries will form an important feature of this new legislation and it is desirable that local authorities should exercise the greatest possible care in preparing their case for any such inquiry. Long acquaintance with the procedure and practice of the Local Government Board and its inspectors has satisfied me that many a good case has been lost or spoilt through mismanagement and it is therefore very desirable that local authorities who are likely to be involved in any Local Government Board inquiry should make themselves familiar with the requirements of the Board and of its inspectors so that at the inquiry they may be fully prepared for all contingencies.

Special instructions have been issued by the Board to their inspectors as to the conduct of local inquiries and these will be found in the appendix to this work. It should be remembered that the object of a local inquiry is to enable the Board to get at the facts of the case with a view of arriving at a proper decision. The Inspector is bound to receive all relative evidence that is tendered, and he reports to the Board the facts as well as his own suggestions and recommendations as to the way in which the case should be dealt with. His report is a confidential document and will not be disclosed by the Board.

I trust that the foregoing general description of the Act and of the way in which it is being applied will prove instructive to those into whose hands this book comes. In the notes to the various enactments there will be found detailed explanations of the law together with the practice of the Local Government Board so far as it has been made known.

WILLIAM A. CASSON.

1, Essex Court, Temple,
January 1, 1912

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

[9 Edw. 7. Ch. 44.]

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THE HOUSING, TOWN PLANNING, ETC., ACT, 1909.

[9 EDW. 7, CH. 44.]

An Act to amend the Law relating to the Housing of the Working Classes, to provide for the making of Town Planning schemes, and to make further provision with respect to the appointment and duties of County Medical Officers of Health, and to provide for the establishment of Public Health and Housing Committees of County Councils. [3rd December 1909.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

Housing of the Working Classes.

Preliminary Note.

It is provided by Section 76 of this Act that this part of the Act is to be construed as one with the Housing of the Working Classes Acts, 1890 to 1903, and may be cited together with those Acts as the Housing of the Working Classes Acts, 1890 to 1909.

Facilities for Acquisition of Lands and other Purposes of the Housing Acts.

Part III. of the principal Act to take effect without adoption.

1. Part III. of the Housing of the Working Classes Act, 1890 (in this part of this Act referred to as the principal Act), shall, after the commencement of this Act, extend to and take effect in every urban or rural district, or other place for which it has not been adopted, as if it had been so adopted.

Note to Section 1.

The effect of this enactment is to give every district council power to put in force the provisions of Part III. of the principal Act in any case where they consider such a course desirable without their being

compelled to resort to the cumbersome procedure hitherto necessary. The provision, however, not only confers these powers on district councils but places them under the obligation of exercising such powers, as the Local Government Board can enforce such an obligation under section 10. On reference to section 12 it will be seen that the county council may pass a resolution transferring to themselves the powers, of any rural district council that is found to be in default. It is further enacted by section 13 that the County Council may assume the powers under Part III. of the principal Act. Apart altogether from any complaint made, and merely where the council of the county " are of opinion that for any reasons it is expedient that the council should exercise . . . any of the powers of a local authority under Part III., the council after giving notice to the council of the district . . . may apply to the Local Government Board for an order conferring such powers on them."

SECTION 2.

A parish council is not a local authority by which any powers relating to the provision of dwelling-houses under Part III. of the principal Act can be exercised.

Provisions as to acquisition of land under Part III. of the principal Act.

2.—(1) A local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the principal Act, by means of an order submitted to the Local Government Board and confirmed by the Board in accordance with the First Schedule to this Act.

(2) The procedure under this section for the compulsory purchase of land shall be substituted for the procedure for the same purpose under section one hundred and seventy-six of the Public Health Act, 1875, as applied by subsection (1) of section fifty-seven of the principal Act.

(3) A local authority may, with the consent of and subject to any conditions imposed by the Local Government Board, acquire land by agreement for the purposes of Part III. of the principal Act, notwithstanding that the land is not immediately required for those purposes.

Note to Section 2.

Local inquiry.

These provisions for the acquisition of land are the essential feature of this part of the new Act. It was considered that local authorities should have power to acquire land compulsorily, not by Provisional Order or Act of Parliament, but on terms similar to those sanctioned in the Small Holdings Act, 1907, and that an Order made by the local authority and confirmed by the Local Government Board should take the place of the usual procedure by a Provisional Order Bill. Provision is made, however, in the event of the order of the local authority being objected to within the prescribed period, for a local inquiry by the Local Government Board. Further, it was considered that there should be a single arbitrator to settle disputes, and that there should be no additional allowance for compulsory purchase.

Note to Subsections (1) and (2).

The Local Government Board have issued an order dated June 14, 1911, entitled the Housing, etc. (Form of Compulsory Purchase Order,

SECTION 2.

etc.), Order, 1911, which relates to the compulsory acquisition of land by a local authority for the purposes of Part III. of the principal Act. The Order prescribes the form of a compulsory Order under the first Schedule of the Act of 1909 and the mode in which the compulsory Order is to be published. The terms of this Order will be found in the Appendix.

The procedure under section 176 of the Public Health Act, 1875, contained three steps—

(1) Publication of advertisement in local newspapers.
(2) Service of notice on owners and lessees.
(3) Petition (optional) to the Local Government Board under seal.

Reference to Schedule I. of this Act will show that the substituted procedure is an order of the local authority, specifying the land it is proposed to purchase, otherwise than by agreement, which order is to be submitted to the Local Government Board for confirmation. This order must be published by the local authority in the manner prescribed by the Board's Regulations, and notice is to be given in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land in the manner prescribed [Schedule I (5)].

Surplus lands.

Section 57 (1) of the principal Act incorporated sections 175–178 of the Public Health Act, 1875, relating to the acquisition of land for the purposes of that Act, and these enactments with the exception of section 176 will still be applicable. Section 175 of the Act of 1875 provides that any lands acquired by a sanitary authority in pursuance of any powers under that Act, and not required for the purposes for which they were originally acquired, shall (unless the Local Government Board direct to the contrary) be sold at the best price that can be obtained.

A person holding an inquiry under the Schedule is not to hear counsel or expert witnesses, except in cases where the Board otherwise direct. The same provision applies to an arbitrator [Schedule I. (8)]. As to this restriction, which will tend to keep the expenses incidental to the execution of the Act as low as possible, we may compare section 9, subsection 11, of the Local Government Act, 1894, where it is similarly provided that at any inquiry or arbitration respecting the compulsory acquisition of land by parish councils, the person or persons holding the inquiry shall not hear counsel or expert witnesses, except in cases prescribed by the Board. The Board have not issued any general order prescribing cases in which counsel or expert witnesses may be heard nor are they likely to do so. They will probably give a special direction in each particular case. Parties are, however, not prohibited from appearing by a solicitor.

Note to Subsection (3).

Sites.

This subsection enables a local authority to acquire land for future development for purposes of Part III. of the principal Act provided that they obtain the consent of the Local Government Board and comply with the conditions subject to which that consent is given. This enactment may be utilised for the purpose of acquiring a site that may come into the market unexpectedly, but care should be taken that any provisional contract of purchase should be made voidable in the event of the consent of the Local Government Board not being obtained within a stipulated time.

The consent of the Local Government Board under this enactment must be a specific consent and must relate expressly to the land to be acquired. Sanction to a loan for the purchase of land is not a consent to the acquisition of the land by agreement under this subsection.

SECTION 3.

Loans by Public Works Loan Commissioners to local authorities.

3. Where a loan is made by the Public Works Loan Commissioners to a local authority for any purposes of the Housing Acts—

(*a*) The loan shall be made at the minimum rate allowed for the time being for loans out of the Local Loans Fund; and

(*b*) If the Local Government Board make a recommendation to that effect, the period for which the loan is made by the Public Works Loan Commissioners may exceed the period allowed under the principal Act or under any other Act limiting the period for which the loan may be made, but the period shall not exceed the period recommended by the Local Government Board, nor in any case eighty years; and

(*c*) As between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest.

Note.

This section is a concise statement of the law as it now stands. Under section 234 of the Public Health Act, 1875, the loan period was sixty years, but this was extended to eighty years by section 1 of the Housing Act, 1903.

Section 3 of that Act enacts—

"(1) The maximum period which may be sanctioned as the period for which money may be borrowed by a local authority for the purposes of the Housing of the Working Classes Act, 1890 . . . shall be eighty years, and as respects money so borrowed, eighty years shall be substituted for sixty years in section 234 of the Public Health Act, 1875.

"(2) Money borrowed under the principal Act or any Acts . . . amending it . . . shall not be reckoned as part of the debt of the local authority, for the purposes of the limitation on borrowing under subsections 2 and 3 of section 234 of the Public Health Act, 1875."

RATE OF INTEREST:—

Interest on borrowed moneys.

Paragraph (*a*) of the above section repeals section 83 of the principal Act, which provided a minimum rate of £3 2*s*. 6*d*. per cent. per annum. ["Any loan advanced by the Public Works Loan Commissioners in pursuance of this Act or for labourers dwellings in pursuance of the Public Works Loans Act, 1875, or any Act amending the same, shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may from time to time authorize as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer."]

Section 1 of the Public Works Loans Act, 1897 (60, 61 Vict. c. 51) reduced this minimum rate from 3⅛ to 2¾ per cent. per annum. Under the Treasury Minute of March 21, 1904, the rate was fixed at 3¼ per cent., and it remains at that figure.

SECTION 4.

Loans by Public Works Loan Commissioners to public utility societies.

4.—(1) Where a loan is made by the Public Works Loan Commissioners under section sixty-seven, subsection (2) (*d*), of the principal Act, to a public utility society, the words "two thirds" shall be substituted for the words "one moiety."

(2) For the purposes of this section a public utility society means a society registered under the Industrial and Provident Societies Act, 1893, or any amendment thereof, the rules whereof prohibit the payment of any interest or dividend at a rate exceeding five pounds per centum per annum.

Note.

This section enables local authorities to get more money on their securities, while section 3 (*ante*) reduces the deficiency. The advantage of this provision from an economical point of view was clearly shown by the President of the Local Government Board in the example that follows. Under the principal Act the maximum period, fixed at fifty years, with interest at 4½ per cent., gave a deficiency, in the case, e.g., of ten cottages let for £6 10*s.* a year, on a loan of £1,500, of £16 16*s.*, i.e., a rate of nearly 1*d.* in the £. Under the new conditions, i.e., eighty years and 3¼ to 3½ per cent., the deficiency would only be about 11*s.* per annum, so that the scheme becomes, for all practical purposes, self-supporting.

Loans.

Section 67 of the principal Act as amended is as follows:—

"(1) In addition to the powers conferred upon them by any other enactment, the Public Works Loan Commissioners may, out of the funds at their disposal, advance on loan to any such body or proprietor as hereinafter mentioned; namely,—

"(*a*) any railway company or dock or harbour company, or any other company, society, or association established for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, or for trading or manufacturing purposes (in the course of whose business, or in the discharge of whose duties persons of the working classes are employed);

"(*b*) any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired;

and any such body or proprietor may borrow from the Public Works Loan Commissioners such money as may be required for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes.

"(2) Such loans shall be made in manner provided by the Public Works Loans Act, 1875, subject to the following provisions:—

"(*a*) Any such advance may be made whether the body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act; but nothing in this Act shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up.

"(*b*) The period for the repayment of the sums advanced shall not exceed forty years.

"(*c*) No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be

mortgaged shall be either an estate in fee simple, or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance.

" (*d*) The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed two thirds of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such advances so to be made from time to time.

" (3) For the purpose of constructing or improving or facilitating or encouraging the construction or improvement of dwellings for the working classes, every such body as aforesaid is hereby authorized to purchase, take, and hold land, and if not already a body corporate, shall, for the purpose of holding such land under this part of this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession."

" PUBLIC UTILITY SOCIETY."

Industrial and Provident Societies.

A society which may be registered under the Industrial and Provident Societies Act 1893, (56 & 57 Vict. c. 39, s. 4) is defined to be " a society for carrying on any industries, businesses, or trades specified in or authorized by its rules, whether wholesale or retail, and including dealings of any description with land. Provided that—

(*a*) No member other than a registered society shall have or claim any interest in the shares of the society exceeding two hundred pounds, and

(*b*) In regard to the business of banking, the society shall be subject to the provisions hereinafter contained.

The restriction of the power to lend money to societies whose rules prohibit the payment of any interest or dividend over 5 per cent. is obviously a very useful one, as by the model rules in force in most industrial and provident societies, it will be seen that interest on loans, dividends, expenses of management, etc., all have priority to the application of profits to any provident Society, *e.g.*, Model Rule as to " Application of Profits."

" The net profits of all business carried on by the society, after paying or providing for the expenses of management, interest on money borrowed, and dividends upon paid-up subscriptions, shall, once in every half-year, be applied, in the first place, in the repayment of moneys borrowed, or any instalment due in respect thereof, and subject thereto to any provident purpose in such proportion as may be agreed upon at any half-yearly meeting of the Society."

Payment of purchase or compensation money (which would otherwise be paid into court) on direction of Local Government Board.

5.—(1) Any purchase money or compensation payable in pursuance of the Housing Acts by a local authority in respect of any lands, estate, or interest of another local authority which would, but for this section, be paid into court in manner provided by the Lands Clauses Acts or by paragraph (20) of the Second Schedule to the principal Act may, if the Local Government Board consent, instead of being paid into court, be paid and applied as the Board determine.

(2) Any such decision of the Board as to the payment and

SECTIONS 6, 7.

application of any such purchase money or compensation shall be final and conclusive.

Note.

Compensation.

The principal Act by incorporating section 69 of the Lands Clauses Act, 1845, provided (section 20) that where the money payable for compensation or purchase was payable in respect of land taken from parties having limited interests, or prevented from treating, or not making title, the money was to be paid into the Court of Chancery and appropriated according to the direction of the Court.

The effect was that where one local authority acquired land for the purposes of the Housing Acts from another local authority, the Court had to deal with the manner in which the purchase money was to be applied, and the purchasing authority had to pay the costs of any application for that purpose. The above section of the new Act simplifies procedure, and avoids expense by substituting the Local Government Board for the Court, and by making the decision of the Board final and conclusive.

Provision of public streets in connexion with exercise of powers under Part III. of the principal Act.

6. Any local authority in connexion with the exercise by them of their powers under Part III. of the principal Act may lay out and construct public streets or roads on any land acquired or appropriated by them for the purpose of that Part of that Act, or contribute towards the cost of the laying out and construction of any streets or roads on any such land by other persons on the condition that those streets or roads are to be dedicated to the public.

Note.

As the law stood prior to this enactment, the provision of highways was only permissible under Parts I. and II. (see Act of 1890, sections 12 (3), 38 (12), 39 (1) (*a*) (i)). See also section 48 of this Act and note thereto. This section would seem to be primarily intended for the requirements of urban districts. It is an obviously useful provision in view of the fact that slum dwellings owe their defects in great measure to the insufficiency of ventilation due to their position in close alleys. Any scheme under Part III. may, it seems, provide for the erection of shops. These would yield a remunerative return so as to justify the land acquired by the local authority being used for street construction [section 11 of Housing Act, 1903; 3 Edw. 7, c. 39]. Under that enactment a local authority could provide shops in connexion with dwellings erected by them under Part III. of the Act of 1890. This has been done in several cases with the approval of the Local Government Board.

Expenditure of money for housing purposes in case of settled land.

7.—(1) The following paragraph shall be substituted for paragraph (*b*) of subsection (1) of section seventy-four of the principal Act:—

(*b*) The improvements on which capital money arising under the Settled Land Act, 1882, may be expended, enumerated in section twenty-five of the said Act and

referred to in section thirty of the said Act shall, in addition to cottages for labourers, farm servants, and artisans, whether employed on the settled land or not, include the provision of dwellings available for the working classes, either by means of building new buildings or by means of the reconstruction, enlargement, or improvement of existing buildings, so as to make them available for the purpose, if that provision of dwellings is, in the opinion of the court, not injurious to the estate or is agreed to by the tenant for life and the trustees of the settlement.

Settled land.

(2) The provision by a tenant for life, at his own expense, of dwellings available for the working classes on any settled land shall not be deemed to be an injury to any interest in reversion or remainder in that land; provided that the powers conferred upon a tenant for life by this subsection shall not be exercised by him without the previous approval in writing of the trustees of the settlement.

Note.

Section 74 of the principal Act enabled a tenant for life to provide dwellings available for the working classes, but did not allow him to reconstruct or otherwise make improvements in existing buildings. The present section provides an alternative to the opinion of the Court, namely, agreement between the limited owner and the trustees of the settlement.

Powers of tenant for life.

SUBSECTION (2) of the above section of this Act cuts down the interest of the reversioner or remainder-man where the tenant for life provides dwellings out of his own income from the settled land, for although apparently the Court may still say whether or no the improvement is injurious to the estate, under subsection (1), in default of agreement as therein provided, under this subsection there is no question of injuriousness if the trustees signify their approval and the tenant for life pays himself.

Both subsections therefore modify the decision *In re Somer's Settled Estates*, reported in *The Times*, March 23, 1899.

The approval of the Court, however, will, it seems, still be necessary under Part I. where the tenant for life wishes to undertake a large improvement scheme in co-operation with the local authority.

[Section 74 of the principal Act enacts:—

"(1) The Settled Land Act, 1882, shall be amended as follows:—

"(*a*) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

Section 8.

" (*b*) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate."

The sections of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), are as follows :—

Settled Land Acts.

Section 4 (1). " Every sale shall be at the best price that can reasonably be obtained.

(2) " Every excharge and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

Section 7 (2). " Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case."

Section 74 of the principal Act was a re-enactment of section 11 of the Housing of the Working Classes Act, 1885, referred to in section 18 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), which enacted :

" The provisions of section 11 of the Housing of the Working Classes Act, 1885, and of any enactments which may be substituted therefore, shall have effect as if the expression ' working classes ' included all classes of persons who earn their livelihood by wages or salaries : provided that the section shall apply only to buildings of a ratable value not exceeding one hundred pounds."

Section 25 of the Settled Land Act, 1882, authorized the erection of " cottages for labourers, farm servants and artizans employed on the settled land or not," and Section 30 enacts " the enumeration of improvements contained in section 9 of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act " (i.e. by section 25).]

Donations for housing purposes.

8. A local authority may accept a donation of land or money or other property for any of the purposes of the Housing Acts, and it shall not be necessary to enrol any assurance with respect to any such property under the Mortmain and Charitable Uses Act, 1888.

Note to Section 8.

This section has the effect of releasing local authorities from any of the obligations under which they were compelled to comply with the requirements of the Mortmain Acts, and section 67 of the principal Act, which previously regulated the holding of land, has now been repealed. A local authority may now accept a donation of land without being obliged to incur the expense involved in enrolling the assurance of such land. The section removes any doubt that may have existed as to the capacity of a local authority to accept a donation of money or other property such as leaseholds to be specifically held for the purposes of the Housing Acts.

Provisions with respect to money applicable under trusts for housing purposes.

9.—(1) If in any case it appears to the Local Government Board that the institution of legal proceedings is requisite or desirable with respect to any property required to be applied under any trusts for the provision of dwellings available for the working classes, or that the expediting of any such legal proceedings is requisite or desirable, the Board may certify the case to the Attorney-General, and the Attorney-General, if he thinks fit, shall institute any legal proceedings or intervene in any legal proceedings already instituted in such manner as he thinks proper under the circumstances.

(2) Before preparing any scheme with reference to property required to be applied under any trusts for the provision of dwellings available for the working classes, the court or body who are responsible for making the scheme shall communicate with the Local Government Board and receive and consider any recommendations made by the Board with reference to the proposed scheme.

Note.

Where a council have any reason to suppose that trusts having for their object the provision of dwellings available for the working classes are not being properly administered, they should bring the cases to the notice of the Local Government Board, so that the latter body may be in a position to take the necessary steps.

Powers of enforcing Execution of Housing Acts.

Power of Local Government Board on complaint to enforce exercise of powers.

10.—(1) Where a complaint is made to the Local Government Board—

(*a*) as respects any rural district by the council of the county in which the district is situate, or by the parish council or parish meeting of any parish comprised in the district, or by any four inhabitant householders of the district; or

(*b*) as respects any county district, not being a rural district, by the council of the county in which the district is situated, or by four inhabitant householders of the district; or

(*c*) as respects the area of any other local authority by four inhabitant householders of the area;

that the local authority have failed to exercise their powers under Part II. or Part III. of the principal Act in cases where those powers ought to have been exercised, the Board may cause a public local inquiry to be held, and if, after holding

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such an inquiry the Board are satisfied that there has been such a failure on the part of the local authority, the Board may declare the authority to be in default, and may make an order directing that authority, within a time limited by the order, to carry out such works and do such other things as may be mentioned in the order for the purpose of remedying the default.

Powers of Local Government Board.

(2) Before deciding that a local authority have failed to exercise their powers under Part III. of the principal Act, the Board shall take into consideration the necessity for further accommodation for the housing of the working classes in such district, the probability that the required accommodation will not be otherwise provided, and the other circumstances of the case, and whether, having regard to the liability which will be incurred by the rates, it is prudent for the local authority to undertake the provision of such accommodation.

(3) Where an order originally made under this section on the council of a county district is not complied with by that council, the Local Government Board may, if they think fit, with the consent of the county council, instead of enforcing that order against the council of the county district, make an order directing the county council to carry out any works or do any other things which are mentioned in the original order for the purpose of remedying the default of the district council.

(4) Where the Board make an order under this section directing a county council to carry out any works or do any other thing, the order may, for the purpose of enabling the county council to give effect to the order, apply any of the provisions of the Housing Acts or of section sixty-three of the Local Government Act, 1894, with such modifications or adaptations (if any) as appear necessary or expedient.

(5) An order made by the Local Government Board under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

(6) Any order made by the Local Government Board under this section may be enforced by mandamus.

Note.

The present section, it will be seen, gives power to the Local Government Board, and to that authority alone, to compel by way of mandamus, the local authority to perform its duties, under Part II. or III.

where a complaint has been made to the Board that the local authority have failed in that respect. The enforcement of Part I. is dealt with in the next section. Subsection (3), provides an alternative means of enforcement, and subsection (4), by incorporating section 63 of the Local Government Act, 1894, throws the expenses of the county council in carrying out the works upon the district in default.

A parish council if it resolves that the rural district council ought to have taken steps to adopt the provisions of Part III. or that they have failed to carry them out after they had been adopted, does not now have to wait for the county council to pass a resolution to take over the work at the expense of the rural district council, but may petition the Local Government Board in manner provided.

This section does not apply to Scotland. See section 53, subsection (11) infra.

Local Government Act, 1894.

Section 63 of the Local Government Act, 1894, is as follows:—

"(1) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect:—

(*a*) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board:

(*b*) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses:

(*c*) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers:

(*d*) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council:

(*e*) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers:

(*f*) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers.

(2) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed the members who are actually appointed shall act as the joint committee."

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Power of Local Government Board to order schemes, etc., to be carried out within a limited time.

11.—(1) Where it appears to the Local Government Board that a local authority have failed to perform their duty under the Housing Acts of carrying out an improvement scheme under Part I. of the principal Act, or have failed to give effect to any order as respects an obstructive building, or to a reconstruction scheme, under Part II. of that Act, or have failed to cause to be made the inspection of their district required by this Act, the Board may make an order requiring the local authority to remedy the default and to carry out any works or do any other things which are necessary for the purpose under the Housing Acts within a time fixed by the order.

(2) Any order made by the Local Government Board under this section may be enforced by mandamus.

Note.

The preceding section relates to reconstruction schemes, the removal of obstructive buildings, and the provision of working-class lodging-houses. This section relates to the enforcement of improvement schemes under Part I., besides providing still further for the enforcement of powers under Parts II. and III. The difference in the two sections, it will be observed, is that in section 11 the Local Government Board take the initiative without the necessity of being approached by means of a complaint.

As regards Part I., section 10 of the principal Act gave no coercive power; it merely gave the confirming authority the option of directing a local inquiry and left it to local opinion to bring the necessary pressure to bear upon the local authority in the event of that authority abstaining from moving even after the inquiry had shown the desirability of their so doing.

This was remedied by section 4 of the Housing Act of 1903 which enacts that if, on the report made to the confirming authority, on an inquiry directed by them under section 10 of the principal Act, that authority are satisfied that a scheme ought to have been made, they may order the local authority to make a scheme, either under Part I. or Part II. of the principal Act, and do all things necessary under the Housing Acts for carrying out the scheme; this order to be enforced, if necessary, by mandamus. The above section of the new Act strengthens the coercive power of the Board, by enabling them to act without waiting for a report, and to fix a time within which the local authority must perform its duty. As to the meaning generally of "improvement scheme," and "reconstruction scheme," see note to section 22 infra.

This section does not apply to Scotland, as to which see section 53, subsection (12) infra.

Powers of county council to act in default of rural district council under Part III. of the principal Act.

12. Where a complaint is made to the council of a county by the parish council or parish meeting of any parish comprised in any rural district in the county, or by any four inhabitant householders of that district, the county council may cause a public local inquiry to be held, and if, after holding such an inquiry, the county council are satisfied that the rural district council have failed to exercise their powers under

Part III. of the principal Act in cases where those powers ought to have been exercised, the county council may resolve that the powers of the district council for the purposes of that Part be transferred to the county council with respect either to the whole district or to any parish in the district, and those powers shall be transferred accordingly, and, subject to the provisions of this Act, section sixty-three of the Local Government Act, 1894, shall apply as if the powers had been transferred under that Act.

See notes to next section.

Power of county council to exercise powers of rural district council under Part III. of the principal Act.

13.—(1) Where the council of a county are of opinion that for any reason it is expedient that the council should exercise, as respects any rural district in the county, any of the powers of a local authority under Part III. of the principal Act, the council, after giving notice to the council of the district of their intention to do so, may apply to the Local Government Board for an order conferring such powers on them.

(2) Upon such an application being made, the Board may make an order conferring on the county council as respects the rural district all or any of the powers of a local authority under Part III. of the principal Act, and thereupon the provisions of the Housing Acts relating to those powers (including those enabling the Public Works Loan Commissioners to lend, and fixing the terms for which money may be lent and borrowed) shall apply as if the council were a local authority under Part III. of the principal Act: Provided that the expenses incurred by the county council under any such order shall be defrayed as expenses for general county purposes.

(3) Where, under any such order, the county council have executed any works in a rural district they may transfer the works to the council of that district on such terms and subject to such conditions as may be agreed between them.

Note to Subsection (1).

Section 12 of the present Act, it will be seen, allows either a parish meeting, or any four inhabitant householders, to make a complaint to the county council, as well as the parish council, with a view of transferring the powers of the rural district council to the county council; while section 13 allows the county council to act solely on their own initiative, and to apply to the central authority for an order transferring to them the powers of the rural council.

Sections 10, 11 and 12 thus make ample provisions for the execution of Part III. by county councils in the event of the default of rural district councils.

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Note to Subsection (2).

The words " all or any of the powers of a local authority under Part III. of the principal Act " include powers to acquire land for the purposes of Part II. in like manner as if those purposes were purposes of the Public Health Act, 1875, and to contract for the purchase or lease of any lodging-houses for the working classes already, or hereafter to be built and provided. Any land vested in the local authority or at their disposal may be appropriated to the purposes of Part III. (section 57). The local authority may purchase existing lodging-houses from trustees if a majority of the committee of the latter consent (section 58). The local authority may on land acquired or appropriated by them, erect lodging-houses for the working-classes, or convert buildings into such lodgings. The Housing of the Working Classes Act, 1900, enables the local authority to lease the land acquired by them on condition that the lessee carries the Housing Acts into execution by building and maintaining lodging-houses (63 & 64 Vict. c. 59, s. 5). The Act of 1903 (3 Edw. 7, c. 39, s. 11) gives power to provide and maintain recreation grounds and buildings adapted for use as shops.

Powers as to Land.

Section 60 of the principal Act empowers the local authority to sell and exchange lands with a view to procuring land better adapted for the purposes of Part III. There are also powers relating to the management of lodging-houses, including the power to make byelaws for their regulation (sections 61 and 62). Lodging-houses established for seven years or upwards may be sold for the best price reasonably to be obtained when too expensive to maintain.

With regard to the powers of borrowing for the purposes of Part III., see sections 3 and 4.

Note to Subsection (3).

Under this enactment a county council may transfer to a rural district council, for example, any groups of houses that they may have erected on terms which may favour such council at the expense of the whole county. There may be cases in which a rural district is too poor to incur all the expenditure that is desirable, and the county council having undertaken the necessary expenditure may transfer the works to the rural district council subject to a part only of the cost being repaid to them.

The balance would remain charged on the general county rate under subsection (2).

Contracts by Landlord.

Extension of section 75 of the principal Act.

14. In any contract made after the passing of this Act for letting for habitation a house or part of a house at a rent not exceeding—

(*a*) in the case of a house situate in the administrative county of London, forty pounds;

(*b*) in the case of a house situate in a borough or urban district with a population according to the last census for the time being of fifty thousand or upwards, twenty-six pounds;

(*c*) in the case of a house situate elsewhere, sixteen pounds;

there shall be implied a condition that the house is at the com-

mencement of the holding in all respects reasonably fit for human habitation, but the condition aforesaid shall not be implied when a house or part of a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for occupation, and the lease is not determinable at the option of either party before the expiration of that term. SECTION 14.

Note to Section 14.

Section 75 of the Principal Act is as follows :—

"75. In any contract made after the fourteenth day of August one thousand eight hundred and eighty-five for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. In this section the expression 'letting for habitation by persons of the working classes' means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by section three of the Poor Rate Assessment and Collection Act, 1869, and in Scotland or Ireland four pounds."

Contracts as to letting houses.

It will be observed that the present section applies only to "any contract made after the passing of this Act for letting for habitation a house or part of a house." It is clear from this that the section will not apply to any continuing tenancy such as that of a house let at a weekly rental, subject to a week's notice where the agreement of tenancy was begun before the date of the passing of the Act, namely December 3, 1909. Unless in such a case the tenancy is determined and a fresh tenancy created, the enactment would not apply.

It is essential that there should be a tenancy at a rental to bring any case within the operation of this and the following section. Cottages such as those let to colliers or cottages occupied by agricultural labourers and others as part of their remuneration, or cottages occupied by their owners, would not come within the operation of these enactments.

As regards the meaning of the term "condition" it was decided in *Walker & Wife*, v. *Hobbs & Co.*, 23 Q.B.D. 458; 59 L.J.Q.B. 93; 61 L.T. 688; 38 W.R. 63; 54 J.P. 199 (a decision on the analogous section in the Housing of the Working Classes Act, 1885), that the word "condition" as used in this context has a wider meaning than at common law. At common law the effect of the word would have been that if the house were not reasonably fit for habitation, the tenant would merely have the right to repudiate the tenancy for non-fulfilment of a condition precedent. The word as used here means that there is implied a promise on the part of the landlord that the premises are so fit, and that if they are not, the tenant can sue for damages. It was further decided that the expression related not only to the sanitary condition of the premises, but to defective repair generally. "The facts of this case are shortly that the plaintiffs went into these rooms as tenants: the ceilings were in a ruinous and dangerous condition and fell down and seriously injured the female plaintiff. It is admitted that the ceilings were in a dangerous condition, and therefore that the rooms were not, speaking in a broad sense, fit for

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human habitation . . . It is contended by the defendants that the word 'condition' in this Act is to be construed according to the strict common law meaning of the term, and that it only means that the tenant may, at his option, repudiate the contract of tenancy if the condition is not fulfilled; but that it does not imply any promise by the landlord to the tenant. The term 'condition' might have that limited meaning in some Acts, but it would be utterly irrational so to construe it in this Act. The object of the Act was to provide the working classes with reasonably fit and proper dwellings, and therefore to bind the landlords to provide such dwellings. It would not afford much protection to the tenant if his only remedy was to give up his tenancy, and turn out after he had been injured by the improper condition of the dwelling. The reasonable interpretation of the Act is that it imports a promise by the landlord to the tenant that the dwelling is reasonably fit for habitation, upon which promise, if it is broken, the tenant can sue" (per Ld. Coleridge, C.J.)

Tenancy agreements.

The decision in *Walker & Wife* v. *Hobbs & Co.*, therefore, puts the tenant of such houses as fall within the purview of the above section, in the same position as a tenant of a furnished house. In the case of furnished houses, there is implied a covenant or warranty on the part of the lessee that the house is reasonably fit for occupation and comfortable habitation on and from the day on which the tenancy is to commence. [*Smith* v. *Marrable*, 11 M. & W. 5; *Wilson* v. *Finch-Hatton*, 46 L.J.Ex. 489.] The same rule obtains in a letting of lodgings combined with attendance. [*Sarson* v. *Roberts*, 1895, 2 Q.B. 395; 65 L.J.Q.B. 37.] The warranty is broken whether the unfitness is due to structural defects or to insanitary condition, and will include such unfitness as bad drainage [*Wilson* v. *Finch-Hatton* supra), dirt or vermin (*Smith* v. *Marrable*, supra), infection through measles (*Bird* v. *Lord Granville Cab. & El.* 317). In all these cases the tenant may throw up the house and furniture as soon as he discovers the defect or unfitness, and bring an action for breach of contract.

It is important to remember that this section will not apply to every house within the limits of the scale of rental, for it is provided that the condition is not to be implied in favour of the tenant where, in the case of a lease of three years and upwards the terms of the tenancy are (i) that the tenant shall put the premises into a fit condition, and (ii) the lease is not determinable at the option of either party before its expiration.

Condition as to keeping houses let to persons of the working classes in repair.

15.—(1) The last foregoing section shall, as respects contracts to which that section applies, take effect as if the condition implied by that section included an undertaking that the house shall, during the holding, be kept by the landlord in all respects reasonably fit for human habitation.

(2) The landlord or the local authority, or any person authorised by him or them in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any house, premises, or building to which this section applies for the purpose of viewing the state and condition thereof.

(3) If it appears to the local authority within the meaning of Part II. of the principal Act that the undertaking implied by

virtue of this section is not complied with in the case of any house to which it applies, the authority shall, if a closing order is not made with respect to the house, by written notice require the landlord, within a reasonable time, not being less than twenty-one days, specified in the notice, to execute such works as the authority shall specify in the notice as being necessary to make the house in all respects reasonably fit for human habitation.

Keeping houses in repair.

(4) Within twenty-one days after the receipt of such notice the landlord may by written notice to the local authority declare his intention of closing the house for human habitation, and thereupon a closing order shall be deemed to have become operative in respect of such house.

(5) If the notice given by the local authority is not complied with, and if the landlord has not given the notice mentioned in the immediately preceding subsection, the authority may, at the expiration of the time specified in the notice given by them to the landlord, do the work required to be done and recover the expenses incurred by them in so doing from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts, or, if they think fit, the authority may by order declare any such expenses to be payable by annual instalments within a period not exceeding that of the interest of the landlord in the house, nor in any case five years, with interest at a rate not exceeding five pounds per cent. per annum, until the whole amount is paid, and any such instalments or interest or any part thereof may be recovered from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts.

(6) A landlord may appeal to the Local Government Board against any notice requiring him to execute works under this section, and against any demand for the recovery of expenses from him under this section or order made with respect to those expenses under this section by the authority, by giving notice of appeal to the Board within twenty-one days after the notice is received, or the demand or order is made, as the case may be, and no proceedings shall be taken in respect of such notice requiring works, order, or demand, whilst the appeal is pending.

(7) In this section the expression "landlord" means any person who lets to a tenant for habitation the house under any

SECTION 15. contract referred to in this section, and includes his successors in title; and the expression "house" includes part of a house.

(8) Sections forty-nine and fifty of the principal Act as amended by section thirteen of the Housing of the Working Classes Act, 1903 (which relate to the service of notices and the description of owner in proceedings), shall apply for the purposes of this section, with the substitution, where required, of the landlord for the owner of a dwelling-house.

(9) Any remedy given by this section for non-compliance with the undertaking implied by virtue of this section shall be in addition to and not in derogation of any other remedy available to the tenant against the landlord, either at common law or otherwise.

Note to Subsection (1).

This subsection goes much farther than did section 75 of the principal Act, for the implied condition of fitness at the commencement of the tenancy is to be taken to include an undertaking on the part of the landlord to keep the premises in repair throughout the holding. This is subversive of common law principles, although there is a case, *Broggi* v. *Robbins* (14 Times Law Reports, 439), where it was decided that in the case of weekly tenancies there is to be inferred an agreement on the part of the landlord to keep the premises in repair, partly, no doubt from the fact that in that case the landlord did the repairs himself occasionally, but also from the consideration that to obtain tenants for the humbler class of dwellings landlords customarily execute the repairs themselves.

Repairs.

It is true the decision was reversed on appeal (see 15 Times Law Reports, 224), but only on the ground that the landlord had had no notice of the defective condition of the premises. "Three questions arose for consideration. The first was this—Was there any evidence on which the learned judge was justified in arriving at the conclusion that there had been an agreement to repair on the part of the defendants? Next came the question if there was an agreement to repair, was there any evidence which justified the judge in finding that the landlord had made default in fulfilling his contractual obligation? *That involved the question whether the landlord had notice of any want of repair.* Then there was the further question, . . . how far a person who was not a party to a contract to repair, like the infant plaintiff in the present case, was entitled to sue in respect of the consequences of a breach of the contract to repair. As to the first question, *he thought there was evidence of an agreement to repair.* He referred to the evidence of the witnesses called for the plaintiff, who stated that the defendants' agent, or collector, had undertaken at the time of the letting that the premises should be kept in repair, and *also the evidence of one of the defendants and their agent, to the effect, that though they never actually agreed to keep premises in repair, yet in fact they always did whatever repairs were necessary.* There seemed to him to be an admission that in the usual course of things landlords did repairs in tenancies of this kind. He thought the plaintiff's evidence was sufficient to support the conclusion that there was an express undertaking to repair, *and the defendants' evidence was sufficient to support an implied*

agreement to repair. . . . Then was there evidence that the defendants' attention had been drawn in this case to the necessity for repairs? He thought the learned judge had confused a notice given by Broggi as to the fireplace with notice as to the state of the floor before the second accident. On a review of the whole evidence, he thought . . . the defendants' attention was never called to any defect in the state of the premises. . . ." (per Ld. Russell, C.J.). See also note to section 14 supra. It is to be noted that section 75 of the principal Act made no mention of "landlord," but it may be inferred that the person liable under that section and section 14 of this Act, can only be the lessor (see subsection (7) infra).

CONTRACTING-OUT.

As to this, see the Act of 1903 (3 Ed. 7, c. 39, s. 12), which renders contracting out nugatory.

Section 12 of 3 Ed. 7, c. 39 is as follows:—"Section seventy-five of the principal Act (which relates to the condition to be implied on letting houses for the working classes) shall, as respects any contract made after the passing of this Act, take effect, notwithstanding any agreement to the contrary, and any such agreement made after the passing of this Act shall be void."

A charging order under section 36 of the Housing Act 1890, could not apparently be made in a case of works carried out under this section.

An owner is entitled under this enactment to enter the demised premises for the purpose of examining them, and it is therefore not open to him to decline to carry out necessary repairs on the ground that he has parted with the control over the premises.

Note to Subsection (3).

As to "closing orders," see section 17. There would, of course, be no necessity for a notice under this subsection, if a closing order had already been made or was about to be made, in respect of the premises, as the form of such order requires the premises to be rendered fit for human habitation (see Form of Closing Order, Appendix). If the landlord does not choose to comply with the notice he can close the house when a closing order shall be "deemed to have become operative" (see next subsection).

Closing orders.

Note to Subsection (5).

"Civil debt in manner provided by the Summary Jurisdiction Acts"—

i.e. by order on complaint under the Summary Jurdisdiction Act, 1879, sections 6, 35. Section 6 of the Summary Jurdisdiction Act, 1879, enacts that "Where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction, shall be recovered in the manner in which a sum declared by this Act to be a civil debt recoverable summarily, is recoverable under this Act, and not otherwise; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt and not otherwise."

Section 35 enacts that "any sum declared by this Act or by any future Act to be a civil debt, which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by

SECTION 15. law to make an order on complaint in pursuance of the Summary Jurisdiction Acts: Provided, etc."

Note to Subsection (6).

As to procedure on any appeal to the Local Government Board under this part of this Act, see section 39 infra: and for rules with reference to appeals, see Appendix.

Note to Subsection (8).

It is enough now to send the notice by post in a registered letter addressed to the owner or his agent at his usual or last known residence or place of business.

Service of notices.

The sections of the Housing Acts referred to in this subsection are as follows:—SECTION 49.—(1) Where the owner of any dwelling-house and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the residence or place of business is within the district of such local authority, to serve any notice by this part of this Act required to be served on the owner, by giving it to him, or for him, to some inmate of his residence or place of business within the district; and in any other case it shall be the duty of the clerk of the local authority to serve the notice by post in a registered letter addressed to the owner at his residence or place of business.

(2) Where the owner of the dwelling-house or his residence or place of business is not known to, and after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3) Notice served upon the agent of the owner shall be deemed notice to the owner.

SECTION 50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

Section 13 of the Housing Act, 1903. "(1) Any notice required to be served under Part II. of the principal Act upon an owner shall, notwithstanding anything in section 49 of that Act, be deemed to be sufficiently served if it is sent by post in a registered letter addressed to the owner or his agent at his usual or last known residence or place of business.

"(2) Any document referred to in section 87 of the principal Act shall be deemed to be sufficiently served upon the local authority if addressed to that authority or their clerk at the office of that authority and sent by post in a registered letter."

Section 87 of the principal Act is as follows:—"Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local auhority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk, or leaving the same at his office with some person employed there."

The effect of these sections and the above subsection of the new Act is that it is sufficient for the purposes of the Act to send the notice by post in a registered letter addressed to the landlord or his agent at his usual or last known residence or place of business.

Note to Subsection (9).

The remedies that are open to the tenant in cases where the condition implied by section 14 is operative, and where there has been a breach of it by the landlord are as follows:—(1) He may invoke the aid of the local authority who may give a written notice under section 15 (3) requiring the necessary works to be executed and (2) he may bring an action for damages at common law for breach of the condition implied by sections 14 and 15 (1). "Condition" is here to be construed as a warranty, breach of which involves damages. See *Walker* v. *Hobbs*, 23 Q.B.D. 458, a decision on section 75 of the principal Act, where the words "in all respects reasonably fit," which are repeated in the present Act, were held to make the landlord liable not only for sanitary but also for structural defects.

The Local Government Board intimate that it will be advisable for the council, where practicable, to resort to the provisions of this section for securing that houses within the rental limit above referred to are put by the landlord into habitable repair, in preference to enforcing the powers conferred upon them by sections 17 and 18 of the new Act in regard to the closing and demolition of houses which become unfit for human habitation, inasmuch as the closing of houses involves as a natural sequel a decreased amount of accommodation being available in the district, whereas such objection is obviated by dealing with cases under section 15.

Forms. For form of notice by person authorized by the local authority before entry for the purpose of viewing the state and condition of a house, see Form No. 1, Appendix.

For form of notice requiring landlord to execute works, see Form No. 2, Appendix.

For form of notice declaring intention of landlord to close house for human habitation, see Form No. 3, Appendix.

For form of order declaring expenses incurred by the local authority to be payable by annual instalments, see Form No. 4, Appendix.

Extension of power of making bye-laws with respect to lodging-houses for the working classes.

16.—(1) The power of making and enforcing byelaws under section ninety of the Public Health Act, 1875, and section ninety-four of the Public Health (London) Act, 1891, with respect to houses or parts of houses which are let in lodgings or occupied by members of more than one family, shall, in the case of houses intended for the working classes, extend to the making and enforcing of byelaws imposing any duty (being a duty which may be imposed by the byelaws and which involves the execution of work) upon the owner within the meaning of the said Acts, in addition to or in substitution for any other person having an interest in the premises, and prescribing the circumstances and conditions in and subject to which any such duty is to be discharged.

(2) For the purpose of discharging any duty so imposed, the owner or other person may at all reasonable times enter upon any part of the premises, and section fifty-one of the principal Act shall apply as if for the reference to the provisions of

Section 16. Part II. of that Act there were substituted a reference to the provisions of such byelaws, and, as if the person on whom such duty is imposed were the owner and any inmate of the premises were the occupier of a dwelling-house.

(3) Where an owner or other person has failed to execute any work which he has been required to execute under the byelaws, the local authority or sanitary authority, as the case may be, may, after giving to him not less than twenty-one days' notice in writing, themselves execute the works and recover the costs and expenses, and for that purpose the provisions of subsection (5) of the last foregoing section, with respect to the execution of works and the recovery of expenses by local authorities, shall apply as if the owner or other person were the landlord, and with such other adaptations as may be necessary.

Note to Subsection (1).

The section of the Public Health Act referred to is as follows :—

Any local authority shall be empowered to make byelaws for the following matters ; (that is to say,)

(1) For fixing and from time to time varying the number of persons who may occupy a house or part of a house, which is let in lodgings or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied :

Byelaws.

(2) For the registration of houses so let or occupied :

(3) For the inspection of such houses :

(4) For enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses :

(5) For the cleansing and lime-washing at stated times of the premises, and for the paving of the courts and courtyards thereof :

(6) For the giving of notices and the taking of precautions in case of any infectious disease.

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses.

Section 94 of the Public Health (London) Act, 1891, is similar in terms.

The above section 90 of the Public Health Act, 1875, and section 94 of the Public Health (London) Act, 1891, relate only to " Every house or part of a house which, not being a common lodging-house, is let in lodgings or occupied by members of more than one family " (Memorandum of Local Government Board prefixed to model byelaws, No. XIII.). But in practice a great many lodging-houses are exempt from the byelaws in question, and in the model byelaws there is a clause providing for the exemption of lodging-houses as to which it may be reasonably inferred that such supervision elsewhere a local authority alone can efficiently exercise will, in fact, be exercised by the lodgers themselves. " The exemption clause assumes that all houses below a certain ratable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the bye-

laws. In the case of houses of higher ratable value, the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will of course rest with the local authority when framing byelaws upon the basis of the model series, to determine what limits of rateable value and rent the circumstances of their district may render it desirable to prescribe" (*Langdon* v. *Broadbent*, 1877, 37 L.T. 434). The above section of the new Act, however, limits the operation of the power of the local authority under the section to the case of "houses intended for the working classes." As to the meaning of the expression "working class," paragraph (*e*) of section 12 of the Schedule to the Housing of the Working Classes Act, 1903, says, "The expression 'working class' includes mechanics, artisans, labourers and others working for wages; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them." *In London County Council* v. *Davis* and *London County Council* v. *Rowton House Company*, 1897, 77 L.T. 693; 62 J.P. 68, which was a decision upon the London Building Act, 1894, Channel, J., held that "the working class is that class of the population who live in such conditions as that overcrowding is likely to take place." SECTION 16.

"EXTEND TO, etc."

The part of this subsection that relates to the imposing of any duty on the owner is intended to override the decision of the High Court in the case of *Arlidge* v. *Islington Borough Council* (1909) 7 L.G.R. 649, where it was held that a byelaw imposing duties on a landlord was bad and unenforceable. Duty of landlord.

"OWNER."

Owner means the person for the time being receiving the rack-rent of the land or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent. [Public Health Act, 1875, section 4; Public Health (London) Act, 1891, section 141.]

The definition of "Owner" thus incorporated in the above subsection must not be confused with that given in section 49 (2) infra, for it is submitted that a "person having an interest in the premises" would include a "person holding the rents and profits under a lease the original term whereof is less than twenty-one years."

The term "working classes" in this section will have to be interpreted without reference to any statutory definition as the definition of the term in the Schedule to the Housing of the Working Classes Act, 1903, is not applicable.

Note to Subsection (2).

This will override covenants as to quiet enjoyment. Section 51 of the principal Act imposes a penalty upon the occupier who prevents the owner, and upon the owner who prevents the medical officer of health, from carrying into effect any of the provisions of Part II. (Unhealthy Dwelling Houses) after notice given to such occupier or owner; so that the above subsection means that a penalty will be imposed upon any inmate who obstructs the owner (within the meaning given in the note to subsection 1 supra) in the execution of the duty imposed upon him by this section.

The section of the principal Act referred to is as follows:-

SECTION 17. "Section 51.—(1) If any person being the occupier of any dwelling-house prevents the owner thereof, or being the owner or occupier of any dwelling-house prevents the medical officer of health, or the officers, agents, servants, or workmen of such owner or officer from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act, after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things requisite for carrying into effect, with respect to such dwelling-house, the provisions of this part of this Act.

(2) If at the expiration of ten days after the service of such order such person fails to comply therewith, he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding twenty pounds: Provided that if any such failure is by the occupier, the owner, unless assenting thereto, shall not be liable to such fine."

Amendment of Procedure for Closing Orders and Demolition Orders.

Duty of local authority as to closing of dwelling-house unfit for human habitation.

17.—(1) It shall be the duty of every local authority within the meaning of Part II. of the principal Act to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and for that purpose it shall be the duty of the local authority, and of every officer of the local authority, to comply with such regulations and to keep such records as may be prescribed by the Board.

(2) If, on the representation of the medical officer of health or of any other officer of the authority, or other information given, any dwelling-house appears to them to be in such a state, it shall be their duty to make an order prohibiting the use of the dwelling-house for human habitation (in this Act referred to as a closing order) until in the judgment of the local authority the dwelling-house is rendered fit for that purpose.

(3) Notice of a closing order shall be forthwith served on every owner of the dwelling-house in respect of which it is made, and any owner aggrieved by the order may appeal to the Local Government Board by giving notice of appeal to the Board within fourteen days after the order is served upon him.

(4) Where a closing order has become operative, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house in respect of which the order is

made, and, within such period as is specified in the notice, not being less than fourteen days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable on summary conviction to be ordered to quit the dwelling-house within such time as may be specified in the order.

Closing orders.

(5) Unless the dwelling-house has been made unfit for habitation by the wilful act or default of the tenant or of any person for whom as between himself and the owner or landlord he is responsible, the local authority may make to every such tenant such reasonable allowance on account of his expense in removing as may be determined by the local authority with the consent of the owner of the dwelling-house, or, if the owner of the dwelling-house fails to consent to the sum determined by the local authority, as may be fixed by a court of summary jurisdiction, and the amount of the said allowance shall be recoverable by the local authority from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

(6) The local authority shall determine any closing order made by them if they are satisfied that the dwelling-house, in respect of which the order has been made, has been rendered fit for human habitation.

If, on the application of any owner of a dwelling-house, the local authority refuse to determine a closing order, the owner may appeal to the Local Government Board by giving notice of appeal to the Board within fourteen days after the application is refused.

(7) A room habitually used as a sleeping place, the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room, shall for the purposes of this section be deemed to be a dwelling-house so dangerous or injurious to health as to be unfit for human habitation, if the room either—

(*a*) is not on an average at least seven feet in height from floor to ceiling; or

(*b*) does not comply with such regulations as the local authority with the consent of the Local Government Board may prescribe for securing the proper ventilation and lighting of such rooms, and the protection thereof against dampness, effluvia, or exhalation:

SECTION 17.

Provided that if the local authority, after being required to do so by the Local Government Board, fail to make such regulations, or such regulations as the Board approve, the Board may themselves make them, and the regulations so made shall have effect as if they had been made by the local authority with the consent of the Board:

Provided that a closing order made in respect of a room to which this subsection applies shall not prevent the room being used for purposes other than those of a sleeping place; and that, if the occupier of the room after notice of an order has been served upon him fails to comply with the order, an order to comply therewith may, on summary conviction, be made against him.

This subsection shall not come into operation until the first day of July nineteen hundred and ten, and a closing order made in respect of any room to which this subsection applies shall not be treated as a closing order in respect of a dwelling-house for the purposes of the next succeeding section.

Note.

In this section are contained, as the Local Government Board point out in their memoranda addressed to local authorities, some of the most important provisions of the new Act.

These provisions remodel the procedure prescribed by the principal Act in regard to closing orders and demolition orders in respect of dwellings unfit for human habitation and supersede the procedure prescribed by sections 32 and 33 of the principal Act (which are therefore repealed).

See also at the end of the notes to this section, sub nom. "Annual Return."

Note to Subsection (1).

Inspection.

The opening words of this subsection as to the duty of causing inspection to be made from time to time re-enact the existing law; but the further duty imposed upon the local authority and every officer of the local authority to comply with such regulations and to keep such records as may be prescribed by the Board is new, and the Local Government Board attach much importance to it owing to the fact that hitherto the duty of inspection has been far from adequately carried out, and even where there may have been inspection, the results have been difficult to ascertain on account of the absence of any records.

By a circular dated September 3, 1910, and addressed to the various town councils, councils of metropolitan boroughs and district councils, of England and Wales, the Local Government Board direct attention to their order making regulations in respect to the manner in which inspection is to be carried out, and in respect to the records to be kept of such inspection. [For copy of this order, number 55578, see Appendix.]

The local authority is itself to determine the procedure of inspection, which inspection is to be carried out from time to time, according to the condition of the dwelling-houses or localities in the particular district, by the medical officer of health, or some officer designated by the local authority and acting under the direction of the medical officer of health. The Board point out that lists are to be prepared, by or through the medical officer, of dwelling-houses the early inspection of which is considered desirable in the opinion of that officer.

Reference should be made to section 11 of this Act as to the enforcement by mandamus of the duty of inspection.

"DWELLING-HOUSE."

Section 49 (1) repeals the definition of dwelling-house given in section 29 of the principal Act, by omitting therefrom the words "means any inhabited building." In the corresponding section of the principal Act, section 32, the word "dwelling-house," when construed according to the definition given in section 29 ("any inhabited building . . .") involved a contradiction of the words "whether the same be occupied or not" in subsection 2 of section 32 (which section runs, "Any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed whether the same be occupied or not, etc."). Hence the difficulty in *Robertson* v. *King*, 1901, 2 K.B. 265, in which case proceedings were taken under section 32 of the principal Act for a closing order in respect of three dwelling-houses of which the respondent was the owner, on the ground that they were used as dwelling-houses and were in a state so injurious to health as to be unfit for human habitation. It was contended by the owner that because for five and a half years the premises had not in fact been occupied, they were, therefore, not "inhabited" within the meaning of section 29. The magistrate refused to make the order. On appeal it was held that the meaning of section 32 was that power was given to make a closing order if the owner, upon notice given to him, does not put the premises into a proper condition; that section 29 was not intended to negative the provisions of sections 32 and 33; that the mere fact of non-occupancy was not in itself an objection in point of law to the making of the closing order; and that the appeal must be allowed.

Meaning of dwelling-house.

The above decison is therefore confirmed by the joint operation of sections 17 and 49 of this Act.

"SO DANGEROUS OR INJURIOUS TO HEALTH AS TO BE UNFIT FOR HUMAN HABITATION."

The matters to which the inspecting officer should particularly direct his attention are set out in Article II. of the Order of the Local Government Board, dated September 2, 1910.

The Housing (Inspection of District) Regulations, 1910, which have been issued by the Local Government Board under this section prescribe the duties of local authorities, but do not add to their powers. For example, these regulations do not give any right of entry or empower the local authority to examine drains or wells, and the general law must be relied on in regard to such matters.

The Local Government Board have stated that for the purpose of the inspection required by section 17, 1909, the local authorities are not restricted to the inspection of houses coming within the limitations as to rent laid down in section 14. Having regard to the terms of section 17 (1), no dwelling-house can, by reason of its class, be considered exempt from inspection, but local authorities will, no doubt, have due regard to the objects in view in arranging for the inspection of their district, and will from time to time give preference to houses in regard to which the needs or circumstances suggest the desirability of early

SECTION 17. inspection. The inspection required by this enactment, however, applies to every class of dwelling-house, irrespective of value, and there is no justification for selecting an arbitrary limit, and for excluding all houses above such limit.

The inspection required by this subsection takes the place of that formerly required under section 32 of the Act of 1890, and although it is not identical in scope with that required to be made under section 92 of the Public Health Act, 1875, there is nothing to prevent an inspection being made to serve the purposes of the Act of 1909 and the Public Health Act, 1875.

"RECORDS."

Records. Provisions for the keeping of records are contained in Article III. of the Housing (Inspection of District) Regulations 1910. Article IV. of the Order lays down the use to be made by the local authority of the records. Reference may usefully be made to Article V. of the Order which provides very fully for the inclusion by the medical officer in his annual report of the results of his inspection, and also of the number of representations made to the local authority with a view to the making of closing orders and the number of closing orders made. It may also be noted that Article VI. makes it incumbent on the medical officer to obey all lawful orders and directions of the local authority in regard to the inspection.

(See "Regulations under section 17 (1)" order of September 2, 1910, in Appendix).

Note to Subsection (2).

Under the principal Act closing orders were made by a court of summary jurisdiction. Under this subsection they will henceforth be made by the local authority. For form of closing order see Form No. 5 (Appendix). The new Act in no way prescribes the procedure to be adopted by the local authority before making a closing order. This matter is left to their discretion.

Notices as to closing orders. The Local Government Board think that the local authority should, before making an order, give due notice to all persons interested in the house; and this, whether those persons be within the definition of owner or not. As to the definition of owner, see note to subsection (3) infra. The object of giving notice is that all persons interested may be afforded an opportunity of being heard on the subject; otherwise there would only be the right of appeal against the order after it had been made (subsection 3), which right is competent only to the "owner."

"Until in the judgment of the local authority . . . fit for that purpose." These words were not to be found in the text of the principal or any amending Act; but in the forms prescribed by the Local Government Board in pursuance of the Acts 1890 to 1900 were to be found the words "prohibit the using . . . until in our judgment they are rendered fit," and in the form prescribed in pursuance of the Act of 1903 the words "do hereby require you within days from the service of this notice to make the said dwelling fit for human habitation." The effect of these orders is now therefore incorporated in the above section of this Act.

If the local authority make a declaration under any byelaw to the effect that any dwelling-house is unfit for habitation, and direct the same to be closed, such declaration will not be a bar to a subsequent application to justices for a closing order under the Housing Acts. [*Slight* v. *Portsmouth Corporation*, 95 L.T., 356, 70 J.P. 359.]

It is important that the wording of the prescribed form of closing order should be strictly followed. Cases have occurred in which orders

have been held to be invalid by reason of the omission of essential words such, for example, as those which relate to the person on whose representation or information an order has been made. If, however, a closing order, followed by a demolition order, was made and not appealed against, they would no doubt be valid. See *Reg.* v. *Smith*, L.R. Q.B. 604 and *Rex* v. *W. Yorks Justices*, L.G.C.L. 1901.

A closing order made by a local authority must set forth the facts as to the representation that has been made to them by their medical officer of health or other officer, or as to the information that has been given to them on which they have acted in making the order. If it does not contain such information the order will be invalid, but that does not prevent an appeal being made against it to the Local Government Board; indeed, if such an appeal is not made the order would become operative, even though it was originally invalid.

As to part of a house.

It seems to be doubtful whether a closing order could be made in respect of a single room or of a part of a house without applying to the entire house. The statutory enactment seems to necessitate the closing order being made in respect of the whole dwelling-house where any substantial part of it is unfit for habitation. Under subsection (7) single rooms of a particular character are specifically dealt with, and such rooms appear to be the only ones in respect of which closing orders can be made.

Separate closing and demolition orders and separate notices of orders are desirable in the case of each dwelling-house where several adjoining dwelling-houses belong to the same owner. A closing order may be made in respect of an unoccupied dwelling-house.

A closing order applies to the whole of a dwelling-house, and must be confirmed or quashed as a whole. It cannot be varied so as to apply to part only of a dwelling-house.

Owners of equity of redemption as well as every mortgagee should be served with notices of closing orders.

In the opinion of the Local Government Board a local authority, when about to make a closing order, must give all parties an opportunity of carrying out any works that may be necessary to put the premises into a habitable condition. A local authority is not, however, under any statutory obligation to do this, and may proceed to make a closing order without first giving an owner an opportunity to make alterations in the premises, but the advantage that such course has is to strengthen the position of the local authority where a closing order is appealed against under subsection (6).

Objections.

The suggestion in the memorandum of December 31, 1909, issued by the Local Government Board as to affording an opportunity to persons interested of being heard before a closing order is made, would be met by a notice inviting the owner of the dwelling-house to be present at a meeting of the local authority or their committee, at which the matter could be discussed, and consideration given to any suggestions which the owner might make as to the repairs he was willing to effect.

There is no appeal to the High Court against a decision of the Local Government Board in respect of an appeal against a closing order, and it would only be where the Board exceeded their jurisdiction or were guilty of misconduct, that the decision of the Board could be brought up on a motion for a writ of certiorari.

It may be thought convenient for local authorities to prescribe some rules, setting up a standard to which all houses ought to conform, but such a course would be impracticable. A local authority must take the facts as regards each house separately into consideration, and any attempt to lay down general rules would no doubt be held to be illegal.

It would appear that this enactment requires that the unfitness for

SECTION 17.

habitation of any dwelling-house in respect of which a closing order is made should be some condition of the house itself, and it is doubtful if, for example, the absence of a water supply would be sufficient to justify the making of a closing order. Nor is non-compliance with byelaws as to buildings a ground on which a closing order could be made.

When a closing order is being made, it is not necessary to deal with the houses under section 15 by giving the notices mentioned in subsection (3) of that section. The procedure under the latter section should be adopted with a view of avoiding the obligation to make closing orders under section 17.

Representations.

A separate representation is necessary for purposes of section 17 (2) of the Housing, Town Planning, etc., Act, 1909, in addition to the report of inspection under section 17 (1). It is not necessary and probably not desirable that the representation should specify the works necessary to remedy defects, though it is desirable that the nature of the defects should be clearly indicated in the representation or in a report annexed to it.

The representation of the medical officer of health or other officer, in regard to dwelling-houses in respect of which it is proposed that a closing order should be made, should be in writing.

A closing order was made and a copy served on the occupier and owner, who were both named in it. The occupier, who was not the owner, appealed, and the real owner did not appeal. The appeal was treated as a nullity, and as no effective appeal was made within the statutory period the closing order came into operation.

Where an owner of cottages is a person of small means he must make the deposit required by the rules as to appeals, and in the event of his appeal not succeeding he cannot be relieved of the burden of the costs.

Note to Subsection (3).

In the forms in proceedings relating to closing orders under the old Acts, the Local Government Board considered it inappropriate to make provision for the use of a preliminary notice in the case where immediate discontinuance of occupation was required or where the house was not reasonably capable of being made fit for human habitation. The present section however makes it imperative to serve notice of the closing order on every owner of the dwelling-house in respect of which the closing order has been made. See also note to subsection (2) as to notice to persons interested, whether owner or not.

"OWNER."

Owner.

See section 49 (2) infra, which excludes lessees whose original term was less than twenty-one years. The term owner, as defined in the principal Act, included a freeholder who had demised his property for a term of years, of which less than twenty-one years were unexpired. It does not expressly say this, but does expressly exclude "lessees holding or entitled to the rents of such premises for a term of years, of which twenty-one years do not remain unexpired." The only definition in the Lands Clauses Acts is to the effect that the word "owner" shall be, in certain events, understood to mean any person or corporation who would be enabled to sell and convey to the promoters of the undertaking (Lands Clauses Act, 1845, section 3). See also *Reg.* v. *Vestry of St. Marylebone* (20 Q.B.D. 415; 52 J.P. 534).

The net difference as regards lessees made by the repeal of the definition in section 29 of the principal Act is that the term "owner" now includes all lessees, except those holding on a lease the original term of which was less than twenty-one years.

The Local Government Board is here constituted a tribunal of appeal in addition to the Courts of Quarter Sessions (see notes to sections 18, 46 infra); and the period of seven days under the principal Act is here doubled; but the time runs in the present Act from the service of the order, not as formerly from the decision of the Court.

The proceedings of the local authority prior to the making of a closing order do not give the owner any right to be heard. His rights begin when the notice of the closing order is served on him, cf. *Attorney General* v. *Hooper* (1897, 3 Ch. 487). The local authority may, however, if they think fit hear an owner before they make a closing order against him. Their refusal to hear him would not be a good ground on which he could appeal to have an order quashed. When notice of a closing order is served on the owner it is desirable that he should be furnished with information as to the defects in the house and with a copy of the report or representation of the medical officer of health under subsection 2.

Note to Subsection 4.

For form of notice of closing order which has become operative, see Form No. 6 (Appendix).

"Operative."

I.e., when the time for giving notice of appeal has expired, and no notice has been given; or the appeal, if there has been one, has failed.

"Default, etc."

It will be noticed that the tenant is only liable to be ordered to quit, whereas under section 32 (3) of the principal Act, he was liable to a penalty of 20*s.* a day during disobedience.

Ejectment of tenants.

Difficulties are sometimes experienced in securing the ejectment of tenants from premises for which a closing order has been made and it may be necessary to take proceedings before the justices under the Small Tenements Recovery Act, 1838, to obtain an ejectment order. Cases have occurred where after ejectment the tenants have returned and occupied the premises. They are then trespassers and can be forcibly removed, but ejectment proceedings could be taken before the justices under section 34 of the Summary Jurisdiction Act, 1879, or section 10 of the Housing of the Working Classes Act, 1903.

If the tenant makes default in complying with a closing order the proper course for local authorities to adopt is to proceed under the latter part of section 17 (4) for an order against the occupier. If that order is obtained and disobeyed the local authority may then proceed as above suggested either under section 34 of the Act of 1879 or under section 10 of the Act of 1903.

Notices to quit should not be served on tenants until a closing order has become operative and consequently if a closing order has been made and appealed against within the time limited by subsection (3) any notices served on tenants should be withdrawn. There do not appear to be any means by which, after a closing order has been made under section 17 of the Housing, Town Planning, etc., Act, 1909, the owner can be prevented from letting the vacated house to another tenant before the closing order becomes operative.

Note to Subsection (5).

"Allowance."

A distinction is drawn in this subsection which is not to be found in the principal Act. It is based upon equitable grounds and does

Section 17. not involve, as under the principal Act, the anomaly of making the landlord pay the allowance to the outgoing tenant, when the house has been rendered unfit by the wilful act or default of the tenant or of some one for whom he is responsible. The amount of the allowance will be determined in the first instance by the local authority, with the consent of the owner, and, in default of such consent, it will be fixed by a court of Summary Jurisdiction.

Note to Subsection (6).

For form of order determining a closing order see Form No. 7 ; and for form of refusal of local authority to determine a closing order, see Form No. 8 (Appendix).

In the principal and amending Acts there was no direct reference to determination, and it was left to be gathered from the enactments in the third schedule to the principal Act.

A Court of Summary Jurisdiction will no longer have power to enlarge the time for the execution of any works under a closing order (see section 21).

Appeals.

Where a closing order is made it must either be appealed against or become operative and there is no means by which it could be suspended on an undertaking being given by the owner to carry out repairs. The Local Government Board will refuse to interfere at this stage as they have no power until an appeal against a closing order has been lodged with them. If a closing order has been made and an appeal has been lodged against it, the local authority could not properly determine the closing order under this enactment until the appeal had been decided. The proper course if the sanitary authority are satisfied that the house has been rendered fit for habitation is to procure the abandonment of the appeal and then determine the order. A closing order should not be determined unless the whole of the house has been rendered fit for habitation.

The words " rendered fit for human habitation " in this subsection must be construed without reference to the terms of subsection (1) and they are clearly not to be regarded as limited by the words " in a state so dangerous or injurious to health." It thus appears clear that a closing order may be made in respect of a house which for any reason whatever is unfit for human habitation.

Where no appeal has been made against a closing order within the statutory period and an owner carries out such improvements and repairs as he considers necessary, he would still have a right of appeal to the Local Government Board under section 17 (6) if the local authority declined to determine the closing order.

If a closing order is made and is not served on some person who could properly be served as an owner it is inoperative, but the local authority may at any time begin afresh and make a new order and serve it on " the owner," which would be sufficient service if the copy was delivered on the premises.

Note to Subsection (7).

For years the Local Government Board have insisted on a minimum height of 9 feet for the entire floor area for all rooms not in the roof of a building, and a minimum height of 9 feet for attics to the extent of not less than two-thirds of the floor areas. Later, in view of the fact that many local authorities regarded these requirements as too stringent, the Board required in all cases to be satisfied that a minimum height of 9 feet was really reasonable ; and as regards rooms intended

to be used as sleeping rooms, the Board have assented to a height of 8 feet 6 inches and even 8 feet, but not less. The minimum height of 7 feet required by the above subsection cannot therefore be regarded as unreasonable. It applies, however, to all rooms intended to be used as sleeping rooms, whether in new buildings or in existing buildings. The words "on an average" will cause no difficulty in the majority of cases; but of course there may be cases of rooms so shaped that it will require some complicated calculations to determine whether its average height is 7 feet.

The procedure for enforcing a closing order under this subsection is by means of an application to the justices under section 34 of the Summary Jurisdiction Act, 1879.

The Local Government Board advise councils, if there are in the district any rooms which come within the terms of subsection (7) to frame and forward for their approval a suitable code of regulations.

ANNUAL RETURN TO BE MADE BY LOCAL AUTHORITY UNDER SECTION 44 OF THE PRINCIPAL ACT:—

Annual return to Local Government Board.

Section 44 of the principal Act enacts that "Every local authority shall every year present to the Local Government Board, in such form as they may direct, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this part [i.e., Part II., which deals with "Unhealthy Dwelling Houses"] of this Act."

The form for the "Annual Report" or "Annual Account" hitherto in use has been altered in some particulars by the Board. See Form of Annual Account under the Housing of the Working Classes Act, 1890, Part II. (Appendix). The alteration has been rendered necessary by the amendments of the principal Act in the above section of the new Act. It will be observed that the form is issued in duplicate, one copy to be sent to the clerk to the local authority and the other to be used for the return which is to be forwarded to the Board.

Paragraph (1) in the return requires information as to the number of dwelling-houses in respect of which complaints have been made to the medical officer of health by householders during the year. This power of making complaint by four or more householders is given by section 31 (1) of the Act of 1890, which is to the following effect:—

Section 31 (1). "If in any district any four or more householders, living in or near to any street, complain in writing to the medical officer of health of that district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority.

(2) "If within three months after receiving the said complaint and opinion or representation of the medical officer, the local authority, not being in the administrative county of London, or not being a rural sanitary authority in any other county, declines or neglects to take any proceedings to put this part of this Act in force, the householders who signed the complaint may petition the Local Government Board for an inquiry, and the said Board after causing an inquiry to be held may order the local authority to proceed under this part of this Act, and such order shall be binding on the local authority."

This section of the Act of 1890, which is not repealed, therefore affords a parallel mode of procedure to that of the district inspection

SECTION 18. by or through the medical officer under section 17 (replacing section 32 of the Act of 1890) of the new Act.

This distinction is more clearly seen in the form of paragraph 2 of the return, which paragraph, besides requiring the number of dwelling-houses in respect of which representations were made to the local authority during the year (*a*) by the medical officer upon complaints made by householders, under section 31 (1) of the Act of 1890, and (*b*) by any other officer of the local authority or upon information otherwise given, under section 17 of the new Act repealing section 32 (1) of the Act of 1890, also requires the number of dwelling-houses in respect of which representations were made to the local authority by the medical officer on his own initiative under section 30 of the Act of 1890 [which enacts " It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation."] This section is not repealed by the new Act.

Paragraph 5 of the return requires the number of dwelling-houses in respect of which closing orders were made during the year (*a*) by justices (section 32 of the Act of 1890) and (*b*) by the local authority (section 17 of the Act of 1909). Subdivision (*a*) of this paragraph appears to be based on a misconception, inasmuch as section 17 of the new Act repeals section 32 of the Act of 1890. The local authority alone has power to make closing orders under the Housing Acts, although of course it is to the justices to whom application must be made to enforce a closing order, where the owner proves contumacious.

Paragraph 9 requires the number of dwelling-houses in respect of which appeals, under section 35 (1) of the Act of 1890, made during the year against orders of the local authority for demolition, were allowed. This subsection of the principal Act has been modified by the new Act. See note to section 46 infra.

Paragraph 11 et seq. deal with obstructive buildings (as to which see section 38 of the principal Act). It requires the number of buildings in respect of which representations were made to the local authority during the year by the medical officer of health, under section 38 (1) of the Act of 1890. As to the amendment of this section by the new Act and the meaning generally of " obstructive building," see note to section 46 infra.

There have been considerable modifications of this section by the new Act, as to which and to reconstruction schemes generally, see note to section 46.

Order for demolition.

18.—(1) Where a closing order in respect of any dwelling-house has remained operative for a period of three months, the local authority shall take into consideration the question of the demolition of the dwelling-house, and shall give every owner of the dwelling-house notice of the time (being some time not less than one month after the service of the notice) and place at which the question will be considered, and any owner of the dwelling-house shall be entitled to be heard when the question is so taken into consideration.

(2) If upon any such consideration the local authority are of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being

taken with all due diligence to render it so fit, or that the continuance of any building, being or being part of the dwelling-house, is a nuisance or dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, they shall order the demolition of the building.

(3) If any owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, and the local authority consider that it can be so rendered fit for human habitation, the local authority may, if they think fit, postpone the operation of the order for such time, not exceeding six months, as they think sufficient for the purpose of giving the owner an opportunity of executing the necessary works.

(4) Notice of an order for the demolition of a building shall be forthwith served on every owner of the building in respect of which it is made, and any owner aggrieved by the order may appeal to the Local Government Board by giving notice of appeal to the Board within twenty-one days after the order is served upon him.

Note to Subsections (1) and (2).

This section supersedes section 33 of the principal Act. The superseded section, in substance, provided that where a closing order had been made and not subsequently determined, the local authority, if of opinion that the house was dangerous to the public or the inhabitants of the neighbouring dwelling-houses, and that the necessary steps to render it fit were not being taken, were to pass a resolution to the effect that it was expedient to order demolition. Notice of this resolution was then to be served on the owner, which notice was to specify time and place for further consideration of the resolution, the further consideration to be not less than one month after service of the notice ; the owner could then, on the further consideration, attend and state his objections to the resolution. If upon further consideration, the local authority still decided on the expediency of demolition, a demolition order might be issued unless the owner undertook to execute forthwith the works necessary to render the dwelling fit, which works were to be executed within such reasonable time as was specified. Demolition procedure.

Under subsection (1) proceedings with a view to an order for demolition cannot be initiated until a closing order has been operative for three months. For meaning of " operative " see note to preceding section, in connexion with which it may be noted that as a magistrate no longer has power to determine a closing order at any time before the demolition order, there is no question of an application to the Court for an order declaring the house to be habitable.

The change in the new section is this : that on the fulfilment of the three co-existing conditions (viz., that the house has not been rendered fit, that the necessary steps are not being taken, and that the continuance of the building is dangerous to the public and to neighbouring dwelling-houses) the local authority are no longer required to pass a resolution or to give notice of the resolution specifying time and place

SECTION 18. for further consideration of the same. The closing order having been issued by the local authority under the preceding section, and remained operative for three months, the authority merely have to give at least one month's notice for consideration of the question of demolition, and if upon consideration at the time specified, the three conditions are fulfilled, they proceed straightway to order demolition. As to the necessity of the co-existence of all three conditions see decision under the principal Act in *Vale* v. *Southall—Northwood Urban District Council.* 60 J.P. 134.

Demolition procedure.

Subsection (2) should be read in conjunction with the amended section 34 (1) of the principal Act, which is now to be read : " Where an order for demolition of a building has been made, the owner thereof shall within three months after *the order becomes operative* proceed to take down and remove the building, and if the owner fails therein the local authority shall proceed to take down and remove the building, and shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of money (if any) to the owner." This means that when the local authority has, under subsection (2) of the new Act, issued its demolition order, the owner has three months, after the expiry of the twenty-one days' period for appealing against the order, in which to remove the building, failing which, or unless he can secure a postponement under subsection (3) of the above section by satisfying the local authority that he can render the house fit for habitation, the local authority can at once remove the building.

The term closing order in this section means a closing order made by a local authority under section 17 (2).

Under subsection (1) the local authority will have to consider at the expiration of three months after a closing order has been made whether they will make a demolition order. If they are satisfied that the dwelling-house has not been rendered fit for habitation and that the necessary steps are not being taken with all due diligence to render it so fit a demolition order must be made, but its operation may be postponed for six months under subsection (3) if the local authority consider that it can be rendered fit for human habitation.

Postponement.

After the service of a demolition order the owner has no right to demand from the local authority any information as to the repairs that are required to be done to the premises. It will rest entirely with the local authority to determine whether they will postpone the operation of the order under subsection (3). If a closing order has been made and has been in force for three months the local authority must make a demolition order. If it should appear in any case where premises are unfit for human habitation as dwellings that the owner is desirous of utilizing them for other purposes it is desirable that he should have an opportunity of doing so before a closing order is made, as it is doubtful if he could alter the character of the premises after such an order had become operative.

For form of notice of time and place at which the question of the demolition of a dwelling-house will be considered, see Form No. 9 (Appendix).

Form of order for demolition of dwelling-house, see Form No. 10 (Appendix).

Form of order for demolition of building being or being part of a dwelling-house, see Form No. 11 (Appendix).

Note to Subsection (3).

No enlargement of the time allowed for the execution of works or the demolition of a building can now be granted by a Court of Summary Jurisdiction (see section 21).

The six months' period of postponement is in this subsection substituted for the "such reasonable time as is specified in the order" of section 33 (4) of the principal Act.

Under the present Act the owner, it seems, must execute the necessary works within the period of six months.

For form of order postponing the operation of order for demolition of dwelling-house, see Form No. 12 (Appendix).

Note to Subsection (4).

Under the principal Act an appeal lay to Quarter Sessions **only**, whereas now an appeal lies to the Local Government Board also (see note to section 46). The decision in *R.* v. *De Rutzen and Vestry of Chelsea*, 9 T.L.R. 41, therefore, is to some extent modified.

The procedure on appeal will be found in the Rules of the Local Government Board issued pursuant to section 39 of this Act (see note to section 39 infra, and rules with reference to appeals (Appendix). It may be here noted with regard to closing and demolition orders, that collateral powers exist under the Public Health Acts and Nuisances Removal Acts (*Slight* v. *Portsmouth Corporation*, 1906, 70 J.P. 359). Whether the local authority can decide to demolish a building, if the closing order has been made under those Acts is doubtful; but inasmuch as the opening words of section 18 (1) of this Act are general, and in no way refer to a closing order made under section 17, it is submitted that the local authority have such power. The difficulty formerly created by "owner" being differently defined in the Public Health Acts probably does not now arise (see notes to sections 16 and 17 ante, in definition of "owner"). In any case, the decision in *Slight* v. *Portsmouth Corporation*, 1906 supra, to the effect that the powers of local authorities as to closing orders given by the Housing of the Working Classes Acts are in addition to any other powers they may possess in respect of dangerous and unhealthy houses, would appear to be conclusive on the point. Appeals.

Notices are sufficient if addressed to the owner and it is not necessary that the name of the owner should be stated (see section 267 of the Public Health Act, 1875). It is always desirable to address notices to "The Owner," and if they are properly served in this form on the occupier of the premises they will be binding as against all persons who are owners. Even during the short time that this Act has been in operation several cases have occurred where closing orders and demolition orders have been held to be invalid because they were addressed by name to some persons who were not owners and were not addressed by name to any persons who were owners. On this point see *Shepherd* v. *Corporation of Norwich*, 30 Ch.D. 553. It should also be borne in mind that all demolition orders should contain precise and accurate descriptions of the premises affected.

Where houses have been demolished under a demolition order the owner of the land cannot be assisted by the local authority with an advance of money on loan to enable him to erect new houses, but he could sell the land to the local authority if they thought it suitable so as to enable them to erect houses under the powers which they possess under Part III. of the Act of 1890.

SECTION 19.

Power to redeem annuities charged by charging order under section 36 of the principal Act.

19. Any owner of or other person interested in a dwelling-house on which an annuity has been charged by a charging order made under section thirty-six of the principal Act (which relates to the grant of charges) shall at any time be at liberty to redeem the annuity on payment to the person entitled to the annuity of such sum as may be agreed upon, or in default of agreement determined by the Local Government Board.

Note.

This section relates to that section (36) of the principal Act which is as follows :—

(1) Where any owner has completed in respect of any dwelling-house any works required to be executed by an order of a local authority under this part of this Act, he may apply to the local authority for a charging order, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for the costs, charges, and expenses of the works, and the local authority, when satisfied that the owner has duly executed such works and of the amount of such costs, charges, and expenses, and of the costs of obtaining the charging order which have been properly incurred, shall make an order accordingly, charging on the dwelling-house an annuity to repay the amount.

(2) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Annuities.

(3) Every such annuity may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the dwelling-house by the owner thereof.

(4) Charging orders made under this section shall be made according to the Form marked A in the fifth schedule to this Act, or as near thereto as the circumstances of the case will admit.

There was no power to redeem under the principal Act like the power to redeem private improvement rates under section 215 of the Public Health Act, 1875. The person entitled to the annuity means the person who executes the repairs. Thus stated there might appear to be no difficulty, but an examination of the law in the state in which it is now left by the Schedule of Enactments repealed, reveals a state of affairs that may cause some trouble in practice. Suppose, for example, a mortgagee in possession of freehold property including houses unfit for human habitation. Before the present Act came into operation, the local authority were empowered to make closing orders, under section 32 of the principal Act, and under section 33 the local authority could, if they were of opinion that the houses were not being rendered fit for habitation with all due diligence, pass a resolution that it was expedient to order the demolition of the building ; under subsection (3) of section 33, if upon the consideration of the resolution and objections the local authority decided that it was expedient to do so, then, unless the mortgagee (and " owner " would include mortgagee in receipt of the rents) undertook to execute forthwith the works necessary to render the dwelling-

houses fit for human habitation, the local authority, were bound to order the demolition of the buildings; and under subsection (4) if the mortgagee did undertake to execute the said works the local authority might order the works that were necessary to be executed within such reasonable time as was specified in the order, and if the works were not completed within that time or any extended time allowed by the local authority or a court of summary jurisdiction, the local authority were bound to order the buildings to be demolished. Now section 36 (1) of the principal Act enacts that where any owner has completed the works required to be executed by an order of the local authority under Part II. of the Act, he may apply to the local authority for a charging order, and when the local authority are satisfied from the certificate of their surveyor and the accounts and vouchers that the works have been properly executed, they shall make an order charging on the dwelling-house an annuity to repay the amount of all costs, charges and expenses. Thus, the mortgagee, in the hypothetical case taken, would be able to obtain a charging order on the freehold inheritance, and, while in possession, could recoup himself out of the rents and profits at the rate of six pounds for every one hundred pounds of the full amount (subsection 2). When the mortgagor redeemed (if at all) the mortgagee would still be regarded as owner for the purposes of the charging order to the extent to which he was then unpaid. Under subsection (4) of section 36 of the principal Act charging orders made under the section must be made according to the form A in Schedule V. or as near thereto as possible. SECTION 19.

Under the principal Act, as unamended by the new Act, there would have been no difficulty. But it may be suggested that as amended there is no power to make a charging order at all. Section 32 is repealed by this Act; so also schedule V. of the principal Act [see Schedule VI. of this Act]. Subsection (4) of section 33 of the principal Act ran: "If an owner undertakes as aforesaid to execute the said works, the local authority *may order the execution of the works* within such reasonable time. . . ." But there appears to be no power under section 18 of the new Act or any other section enabling the local authority *to order the execution* of the works. The amending section is subsection (3) of section 18, which enacts: "If any owner undertakes to execute forthwith the works necessary to render the dwelling-house fit . . . the local authority may, if they think fit, postpone the operation of the order. . . ." The condition precedent to the issue of a charging order under the principal Act was clearly the completion by the owner of works *pursuant to the order of the local authority to do so within a reasonable time*, and there is no re-enacting section in the new Act in place of subsection (4) of section 33 of the principal Act. Charging orders.

Adhering to our illustration, it seems that the mortgagee would not be entitled to a charging order, nor if he foreclosed and sold the property would he be entitled to add the cost of repair to the mortgage debt.

Section 37 of the principal Act makes the charge a charge on the dwelling-house and not upon any one in personam. In *Hyde* v. *Berners*, 53 J.P. 453, a decision on the Artizans and Labourers Dwellings Act, 1868, which makes the tenant in possession liable during the continuance of his tenure, Stephen, J., said: "The question I have to determine is —who is to pay the amount so charged—the freeholder or the tenant in possession? . . . In the section [i.e., the analogous section in the Artizans and Labourers Dwellings Act, 1868] the word 'owner' means freeholder, not statutory owner. For the plaintiff it has been argued that this charge can be recovered in any way that a rentcharge can be recovered; and as that can be recovered by an action of debt,

Section 20.

although the grantor has not personally guaranteed the payment thereof, therefore, such an action will lie for this charge. I grant that an action for debt would lie against the grantor, but it was argued for the defendant that the words meant that this charge was to be recoverable by any means by which a rentcharge can be recovered, regard being had to the way in which this charge originated, it not being the intention to put the reversioner in the position of a grantor of a rent-charge. I am of opinion that such a view of the Act is, no doubt, possible. It was said that the general scheme of the Act was that the rent [? annuity] should be charged on the property, that the person getting the benefit should bear the burden, and that it is the public who get the benefit in a broad sense, but the occupier gets the advantage till the rentcharge runs out, when the freeholder gets the advantage. . . . I am, therefore, of opinion that the Act does not place the liability in any person, but that the premises were charged with it; and the present occupier, being the owner, is liable during the continuance of his estate."

Rent charges.

But suppose there be no tenant in possession, the question arises whether the owner who is entitled to the rentcharge has a right of action against any one at all? Presumably the whole ownership must in this event bear the burden, in the same way as property charged under section 257 of the Public Health Act, 1875. Cf. *Corporation of Birmingham* v. *Baker*, 17 Ch.D. 782, where it was held that the charge created by section 257 of the Public Health Act, 1875, for expenses incurred by a local authority for private improvement works, and for the payment whereof the owner of the premises in respect of which the same were incurred, was liable under that Act, was a charge upon the premises as defined by section 4 of the Public Health Act; and that it was a charge not on the interest of any particular owner but on the total ownership, that is to say, on the respective interest of every owner for the time being in proportion to the value of his interest.

It is not curious, in this state of the law, that so few charging orders are ever made. If the principle be that whichever owner executes the works, that owner can obtain an order charging the entire ownership with the annuity, with a view to making the other owners bear their proportionate share of the expenses, the decision in *Hyde* v. *Berners* seems unjustifiable, as it makes one statutory owner—the tenant in possession—liable for the full amount of each instalment while he is in possession.

It is submitted that the proper view to take is that the whole ownership must bear the burden whether there be a tenant in possession or not, though no doubt nothing could prejudice the right of the "grantee" to recover from any one particular owner he might elect to sue.

Provision as to priority of charges under section 37 of the principal Act.

20. The charges excepted in subsection (1) of section thirty-seven of the principal Act (which relates to the incidence of charges) shall include charges on the dwelling-house created or arising under any provision of the Public Health Acts, or under any provision in any local Act authorizing a charge for recovery of expenses incurred by a local authority.

Note.

The charges having priority under section 37 (1) of the principal Act over the annuity in question were, "quitrents and other charges incident to tenure, tithe commutation rentcharge, and

any charge created under any Act authorizing advances of public money." It might have been supposed that the concluding words were wide enough to cover the charges mentioned in the above section. The section, however, expressly gives priority to charges for expenses arising under any provision whatsoever of the Public Health Acts—e.g., under section 257 of the Act of 1875, which would, therefore, include private improvement expenses under the Private Street Works Act, 1892; drainage works expenses under the Public Health (London) Act, 1891; and expenses incurred in taking down dangerous structures under the London Building Acts.

Restriction on power of court of summary jurisdiction to extend time.

21. Subsection (3) of section forty-seven of the principal Act (which gives power to a court of summary jurisdiction to enlarge the time for certain matters) shall cease to have effect as respects the time allowed for the execution of any works or the demolition of a building under a closing order or under an order for the demolition of a building.

Note.

The effect of this enactment taken in conjunction with the repeal of portions of section 47 (3) of the Principal Act as regards England, and of section 97 (3) as regards Scotland, is to put an end to the jurisdiction of the Magisterial Courts to enlarge the time allowed under any Order for the execution of any works or the demolition of a building and to enable the local authority to deal with the matter under section 15 and section 18 (3) of this Act. The procedure is explained in the notes on those sections.

Amendments with respect to Improvement and Reconstruction Schemes.

Amendment of section 4 of the principal Act as to official representation.

22. In section four of the principal Act (which relates to an official representation), the words "that the most satisfactory method of dealing with the evils connected with such houses, courts, or alleys, and the sanitary defects in such area is an improvement scheme" shall be substituted for the words "that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area cannot be effectually remedied otherwise than by means of an improvement scheme."

Note.

The section of the principal Act declares that an improvement scheme is the only effectual remedy, whereas the new section says it is the most satisfactory method of dealing with the evils. Apparently this substitution is desirable because a reconstruction scheme is really an improvement scheme on a minor scale (cf. section 23 (2) infra).

"IMPROVEMENT SCHEME."

For the provisions as to "Improvement schemes" in relation to unhealthy areas see ss. 4–10 of the principal Act.

SECTION 22.

Briefly, that Act requires the medical officer of health to inspect unhealthy areas and state his opinion thereupon. He may act either on his own initiative, or when two or more justices or twelve or more ratepayers make complaint to him of the unhealthiness of any particular area in the district. If he comes to the conclusion that any houses or alleys are unfit for human habitation or that the narrowness, closeness and bad arrangement, or the bad condition of the streets and houses within such area, or the want of light, air or proper conveniences are inimical to the health of the inhabitants of the area or of neighbouring buildings; and further that the most satisfactory method of dealing with those evils is by a scheme for rearranging and reconstructing the streets and houses (or some of them) in the area in question by the local authority, he should make a representation to that effect to the local authority, which body, if satisfied of the truth of the representation and the sufficiency of their resources, shall proceed to make a scheme for the improvement of that area.

Inspection.

As regards applications to the Local Government Board for the confirmation of improvement schemes under Part I. of the principal Act, the Board have pointed out that the application, in cases where the orders of the Board might become provisional, must be made by petition under the seal of the local authority, and be accompanied by certain documents and particulars. Improvement schemes do not now run the risks of a provisional order, confirmation by Parliament not now being necessary. [See note as to repeal of section 5 (2) of the Housing Act, 1903.] But that fact will not alter the necessity for the continued inclusion in the petition of the above-mentioned documents and particulars in conformity with section 8 of the principal Act. In particular the petition should be accompanied by:—

(*a*) A copy of the official representation.

(*b*) Two copies of the improvement scheme.

(*c*) Two copies of the estimate of the cost of carrying the scheme into effect.

(*d*) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working class who will be displaced, and the number for whom, and the place or places at which, dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reason for this course must be stated, and the distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area included in the scheme, and the place or places at which dwelling accommodation for the working class is to be provided, may be dealt with, so as to carry out the purposes of the Acts and the proposed scheme.

Improvement Schemes.

(*e*) Particulars showing, by reference to the number of the properties on the deposited maps: (1) the area included in the official representation; (2) any lands (*a*) excluded from such area by the local authority, or (*b*) included in it by the local authority, under section 6 (1) (*a*) (as amended) of the Act of 1890, and the reasons for such exclusion or inclusion; (3) any lands included for widening existing approaches to the unhealthy area or otherwise for opening out the same for purposes of ventilation or health, under section 6 (1) (*b*); and (4) the lands proposed to be taken compulsorily.

The several properties should be numbered consecutively on the "deposited maps" (i.e., deposited with the Board under section 6 of the principal Act). Each parcel of land, notwithstanding that several

may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies. The book of reference to the deposited maps should be prepared *on the ground* at the same time as and in conjunction with the deposited maps, each parcel of land being numbered to correspond with the deposited maps, and being described so as to show clearly what properties are covered by each number.

Section 7 of the principal Act requires the local authority, after determining upon the details of an improvement scheme, to publish advertisements and notices, during three consecutive weeks in September, or October or November, in a local newspaper, stating the fact of a scheme having been made, the limits of the area comprised in it, and naming the place within the area where a copy of the scheme may be seen at all reasonable hours. Following the month of the publication of such advertisement the local authority is to serve notices on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily in pursuance of an improvement scheme and requiring in the case of owners and lessees an answer stating whether they dissent or not. It should be here observed that the forms of advertisements and notices to owners, lessees and occupiers, prescribed by the order of October 22, 1890, issued under section 27 of the principal Act, are no longer current or valid. Analogous forms are prescribed under the combined operation of sections 41, 51 and 75 of the new Act. This substitution is rendered necessary by the fact that a Privy Council order dated February 27, 1905, issued under section 2 of the Housing Act of 1903, transferred all the powers and duties of the Secretary of State under the Housing Acts to the Local Government Board.

Publication.

Section 27 of the principal Act ran: "The confirming authority may by order prescribe the forms of advertisements and notices under this part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this part of this Act." This section is repealed by section 75 of the new Act. The advertisements and notices referred to are the advertisement of an improvement scheme, the notices to the owners or lessees of intention to take lands compulsorily under an improvement scheme, and the notices to occupiers (not being owners or lessees) of the intention so to take lands. See Appendix.

"RECONSTRUCTION SCHEME" (see heading to the text of the section).

Reconstruction scheme.

It may be convenient to note here the meaning of "reconstruction scheme," and the amendments made by this Act to the provisions of the principal Act as to such schemes. (For amendments of section 39 of the principal Act, which relates to reconstruction schemes, see section 46, Schedule II. and Schedule VI.)

Section 39 of the principal Act, which describes rather than defines a reconstruction scheme (the phrase "reconstruction scheme" only occurs in the marginal note to the section in question) is now to be read as follows:—

(1) In any of the following cases, that is to say—

(*a*) Where an order for the demolition of a building has been made in pursuance of this part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say—

SECTION 22.

(i) dedicated as a highway or open space, or

(ii) appropriated, sold, or let for the erection of dwellings for the working classes, or

(iii) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold or let for such erection ; or

(*b*) Where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings or of the neighbouring buildings, and that the demolition or the reconstruction and rearrangement of the said buildings or of some of them is necessary to remedy the said evils, and that the area comprising those buildings and the yards, outhouses and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act,

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

Notices.

(2) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained.

(3) The local authority shall after service of such notice, petition the Local Government Board for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications.

(4) Upon such order being made, the local authority may purchase the area comprised in the scheme as so sanctioned.

(5) Repealed.

(6) Repealed.

(7) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order : provided that the amount of compensation shall, in case of difference, be stated by arbitration in manner provided by this part of this Act.

(8) The provisions of Part I. of this Act as amended by any subsequent Act, relating to the duty of a local authority to carry a scheme when confirmed into execution, to the power of the Local Government Board to enforce that duty, to the completion of a scheme on failure by a local authority, and to the extinction of rights of way and other easements shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act.

(9) The Local Government Board, on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority

to modify any part of the scheme which it may appear inexpedient to carry into execution. SECTION 22.

A reconstruction scheme is an improvement scheme on a small scale.

As to subsection (1) (*a*) (i) see section 6 of the new Act. The power to dedicate the area of unhealthy dwelling-houses as highways or open spaces is of the first importance, not only under all three parts of the principal Act (see note to section 6 of this Act as to Part III.) but also in relation to town planning schemes. Housing reformers, inaugurators of garden cities, and framers of town planning schemes, alike appreciate the futility of any attempt to secure either adequate ventilation or economical arrangement consistent with sanitary conditions, without ample freedom of space. In town planning schemes, the provision of broad main arteries appears almost essential to the feasibility of such schemes. Without broad main routes it would be well-nigh impossible to radiate a congested working-class population outwards from the industrial centre to dwelling-houses planned in accordance with the rusticating ideas of housing reformers. Highways.

It will be noticed that a demolition order is a condition precedent to a scheme for reconstruction [unless the words " or the reconstruction, etc.," in clause *b* indicate that the local authority can proceed without such an order in some cases]. It is not enough that a closing order or closing orders have been obtained. It is of course in accordance with the spirit of the new Act that local authorities should themselves take the initiative in schemes for improvement or reconstruction. It would appear, however, from the tenor of sections 10 and 11 of the new Act that the Legislature does not repose great confidence in the local authorities ; for section 10 empowers the Local Government Board to enforce by mandamus any order made under that section, which section covers Parts II. and III. of the principal Act ; and section 11 empowers the Local Government Board to order schemes to be carried out within a limited time. Local authorities would, however, be hardly justified in incurring the expense of a reconstruction scheme where that could be avoided. There will be possibly a temptation not to go beyond a closing order, inasmuch as the formulation of a reconstruction scheme, after a house or houses have been pulled down under a demolition order within the meaning of sections 39 and 40 of the principal Act, involves the payment of compensation to the owner and the provision of dwelling-houses for the working classes in substitution for those closed. The practical difficulty in the way of avoiding this expense lies in the fact that if the owner do not take the necessary steps to render a house or houses fit for habitation, the local authority is bound under section 18 of the new Act to proceed to an order for demolition ; and further as it does not appear that there is any statutory power in the local authority themselves to do the necessary repairs and charge the owner with the expense, although under section 34 of the principal Act, they are empowered to demolish the building themselves and deduct the expenses from the proceeds of the sale of the materials. In short, if the dwelling-house or dwelling-houses be really fit for demolition, nothing will prevent the ultimate issue of a demolition order. Demolition.

It is necessarily extremely difficult sometimes if not always to distinguish between property that ought to be the subject of an improvement scheme under Part I. of the principal Act and that which ought to be dealt with under a reconstruction scheme. Naturally owners desire the latter, and local authorities favour the former. The local authority must act in good faith in the matter. " If the plaintiff had established that the Corporation were acting in bad faith or were endeavouring under colour of the exercise of statutory powers to evade a liability which they would otherwise be under, I think a state of

SECTION 22.

things would have been proved sufficient to justify the intervention of this Court," per Eve, J., in *Merrick* v. *Liverpool Corporation* (*Liverpool District Registry*), L.G.R., Vol. 8, 1910, at p. 977.

In that case certain local enactments provided that on presentment by the grand jury at quarter sessions the owner of insanitary premises, or on his default the local authority, should take down and remove such premises, and that in either case the owner should receive compensation from the local authority for the damage sustained by him. In 1904 two such presentments were made, one of a " court," and the other of the houses on one side of it. Those houses were accordingly taken down and removed, and compensation was paid to the owner in respect of their demolition. In 1909 the local authority took proceedings before a Court of Summary Jurisdiction under Part II. of the Housing of the Working Classes Act, 1890, to obtain a closing order in respect of the houses on the other side of the Court. Whereupon the owner, relying on the presentment of the " Court," brought an action against the local authority to compel them to proceed under the local enactments with respect to those houses, and to restrain them from proceeding under the General Act, under which no compensation would have been payable. It was held that the " Court " did not include the houses at the side of it, and on that ground and also by reason of the plaintiff's delay, the mandamus ought not to be granted; and that in the absence of bad faith or other very special circumstances, the injunction against taking summary proceedings ought not to be granted where the Legislature had pointed out that as the proper mode of proceeding.

As Eve, J., pointed out, the plaintiff's claim was based upon the allegation (*inter alia*) that the action of the Corporation, although ostensibly and in form directed to the demolition under sections 30 to 34 of the Housing of the Working Classes Act, 1890, of the houses as unfit for human habitation was really and in substance one step in proceeding in a scheme of reconstruction which ought to be dealt with, not under those sections, but either under Part I. of the Act or under sections 38 or 39 of Part II. " The Corporation do not deny," his lordship continued, " that they desire and intend if it be practicable to improve the sanitary condition of this and other parts of the city without having to meet the heavy claims for compensation to which experience has shown the procedure under their Act of 1864 gives rise. They assert that the plaintiff's six houses are in a state so dangerous or injurious to health as to be unfit for human habitation within the meaning of section 30 of the Act of 1890, and they contend that if on this issue of fact the tribunal to which it has been referred for determination by the Legislature comes to a conclusion in their favour, they will be completely justified in having adopted a procedure whereby a necessary sanitary improvement has been effected without undue expense to the community at large. But to this the plaintiff replies that the proceedings of the Housing Committee as evidenced in their own minutes, the reports and oral testimony of the medical officer of health, the procedure adopted in reference to houses similarly situated in the courts contiguous to and forming one area with Court No. 6 [the court in question] and the corespondence between the Corporation officials and the plaintiff's agents with reference to these very houses, all demonstrate that the improvement which it aimed at is not the demolition of the six houses, but only the demolition of such of them as constitute an obstruction to a scheme of thorough ventilation affecting all the five contiguous courts which the medical officer of health has recommended, and which the Corporation have adopted; and she [plaintiff] insists that this is an end which the Corporation ought not

to be allowed to reach by the means which they are now adopting. If the plaintiff had established that the Corporation were acting in bad faith or were endeavouring under colour of the increase of statutory power to evade a liability which they would otherwise be under, I think a state of things would have been proved sufficient to justify the intervention of this Court; but no such case has been made out . . . "

Amendment of the principal Act as to contents of schemes.

23.—(1) Section six of the principal Act (which relates to the contents of an improvement scheme) shall be read as if in subsection (1) the words " for sanitary purposes " were omitted in paragraph (*a*); and as if the following paragraph was inserted at the end of that subsection:—

" and

(*e*) may provide for any other matter (including the closing and diversion of highways) for which it seems expedient to make provision with a view to the improvement of the area or the general efficiency of the scheme."

(2) Provision may be made in a reconstruction scheme under Part II. of the principal Act for any matters for which provision may be made in an improvement scheme made under Part I. of that Act.

Note.

This section, as the Local Government Board point out in their Memorandum, enlarges the scope of subsection (1) of section 6 of the principal Act by enabling an improvement scheme to provide for any matter other than those mentioned in paragraphs (*a*) and (*b*) of that subsection (which provide for the exclusion or inclusion of any part of an area where expedient for rendering a scheme efficient for sanitary purposes, and for widening any existing approaches to unhealthy areas, respectively) including the closing and diversion of highways, for which it seems expedient to make provision with a view to the improvement of the area or the general efficiency of the scheme. This provision the Board point out affects rural districts, as the scope of reconstruction schemes under Part II. of the principal Act is enlarged by subsection (2) of this section, the effect being that provision can be made in any such scheme for any matters for which provision may be made in an improvement scheme under Part I. of the principal Act.

Schemes.

[Section 6 of the principal Act enacted as follows:—

(1) The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates, and

(*a*) may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; and

(*b*) may provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; and

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(*c*) shall provide such dwelling accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act; and

(*d*) shall provide for proper sanitary arrangements.

(2) The scheme shall distinguish the lands proposed to be taken compulsorily.

(3) The scheme may also provide for the scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.]

As to the meaning generally of "improvement scheme" and reconstruction scheme" see notes to the preceding section of this Act.

Amendment of 3 Edw. 7, c. 39. s. 5.

24.—(1) Paragraphs (*a*) and (*b*) of subsection (2) of section five of the Housing of the Working Classes Act, 1903 (which limit the cases under which an order confirming an improvement scheme takes effect without confirmation by Parliament), shall cease to have effect.

(2) An order of the Local Government Board sanctioning a reconstruction scheme, and authorizing the compulsory purchase of land for the purpose shall, notwithstanding anything in section thirty-nine of the principal Act, take effect without confirmation.

Note to Subsection (1).

Under the Act of 1903 it was necessary to obtain Parliamentary sanction for the provisional order of a confirming authority (declaring the limits of the area comprised in the scheme and authorizing the execution of the scheme) in certain cases where it was proposed to take land compulsorily, unless the Local Government Board before making the order were satisfied (*a*) that notice of the draft orders had been served on the landowners concerned and no petition was presented against it within two months after publication and service of notice, and (*b*) that the draft order had been published in the *London Gazette*.

The effect of subsection (1) of section 24 of the new Act is to repeal subsection (6) of section 8 of the principal Act altogether. The Act of 1903 had effected a partial repeal of that section, leaving a distinction in the case of schemes where it was proposed to take land compulsorily.

The repeal of subsection (6) of section 8 of the principal Act involves as a necessary consequence the repeal of section 9, under which costs of opposition of a Bill might be awarded in certain cases.

For the meaning generally of "improvement scheme," see note to section 22 supra.

Note to Subsection (2).

The effect of this section, as the Board point out in their Memorandum, is that, so far as rural districts are concerned, in future an Order of the Board sanctioning a reconstruction scheme under Part II. of the principal Act will in all cases take effect without confirmation by Parliament.

For the meaning generally of "reconstruction scheme," see note to section 22 supra. SECTION 25.

Modification of schemes.

25. The Local Government Board may, in the exercise of their power under section fifteen or subsection (9) of section thirty-nine of the principal Act, permit the local authority to modify their scheme, not only by the abandonment of any part of the scheme which it may appear inexpedient to carry into execution, but also by amending or adding to the scheme in matters of detail in such manner as appears expedient to the Board.

Note.

The effect of this section is that the Local Government Board can authorize the local authority to modify either an improvement scheme for unhealthy areas under Part I., or a scheme for reconstruction under Part II. in any matter, whether of detail or not, and without any obligation on their part of laying the statement of the modifications before Parliament. Thus the order becomes final even if the modifications require a larger expenditure of public money than that sanctioned by the former scheme, or even if it involves the taking of property compulsorily or the affecting injuriously other property in a manner different from that proposed in the former scheme without the owner's or occupier's consent.

This section, therefore, repeals section 6 of the Act of 1903, together with subsection (2) of section 15 of the principal Act.

Section 15 of the principal Act is as follows :—

"(1) The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorized by a confirming Act, may permit the local authority to modify any part of their improvement scheme which it may appear inexpedient to carry into execution, but any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme.

"(2) A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after the permission is given, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament.

"Provided always, that if such modification requires a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or affects injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, the modification must be made by a provisional order to be confirmed by Act of Parliament in the manner provided by this part of this Act on the completion of an improvement scheme."

And section 6 of the Act of 1903 is as follows :—

"(1) If an order under subsection (4) of section 8 or under section 39 of the principal Act, which, if no petition were presented, would take effect without confirmation by Parliament, is petitioned against, the confirming authority or the Local Government Board, as the case may be, may, if they think fit, on the application of the local authority,

SECTION 26. make any modifications in the scheme to which the order relates for the purpose of meeting the objections of the petitioner and withdraw the order sanctioning the original scheme, substituting for it an order sanctioning the modified scheme.

"(2) The same procedure shall be followed as to the publication and giving notices, and the same provisions shall apply as to the presentation of petitions and the effect of the order, in the case of the order sanctioning the modified scheme, as in the case of the order sanctioning the original scheme, but no petition shall be received or have any effect except one which was presented against the original order, or one which is concerned solely with the modifications made in the scheme as sanctioned by the new order."

Section 8 of the principal Act relates to petitions to the Local Government Board by the local authority in respect of improvement schemes with a view to a local inquiry and, generally, to the carrying through of the scheme. Subsection (4) of that section enacts that after receiving the report made upon such inquiry the confirming authority [i.e. now the Board] may make a provisional order declaring the limits of the area comprised in the scheme and authorizing such scheme to be carried into execution.

As to section 39 of the principal Act which relates to reconstruction schemes, see notes to section 22 sub nom. "reconstruction scheme."

Inquiries by Local Government Board inspectors as to unhealthy areas.

26. Any inspector or officer of the Local Government Board, or any person employed by the Board, may be directed to make any inspection or inquiry which is required for the purposes of section sixteen of the principal Act (which relates to inquiries made on the default of a medical officer), and section eighty-five of that Act (which relates to inquiries by the Local Government Board), as amended by this Act, shall apply as respects any inspection or inquiry so held as it applies to local inquiries held under that section.

Note.

This is a new feature as regards inquiries with respect to unhealthy areas. The Local Government Board may now appoint an inspector or other officer instead of leaving the duty of inspection to a medical practitioner, as was the case under the principal Act.

Section 16 of the principal Act enacts that on default of the medical officer of health to inspect the area or to make an official representation with respect thereto, or, where that officer has made an official representation to the effect that the area is not an unhealthy area, the ratepayers, who have made the complaint to him, can appeal to the Local Government Board, who then appoint a medical practitioner to inspect the area and to make a representation to the Board stating whether, in his opinion, the area is an unhealthy one. That representation is then to be transmitted by the Board to the local authority, which body is then to make an improvement scheme in the same manner as if the Board's representation were an official representation within the meaning of the Act. This section remains unamended by the new Act.

Section 85 of the principal Act applies sections 293–296 and 298 of the Public Health Act, 1875, to inquiries conducted by the Board. These sections relate to the power of the Board to direct inquiries whenever they think fit (section 293), orders as to costs of inquiries

(294), and the quasi-judicial powers of inspectors in the conduct of inquiries (296). Section 298 relates to costs of provisional orders and borrowing by the local authority for the purpose of defraying such costs. SECTION 27.

For the modification of section 85 of the principal Act, see note to section 63 of this Act.

Sections 17, 18 and 19 of the principal Act, relating to proceedings on local inquiry, the requirement of giving notice publicly of the inquiry, and the power of the officer conducting the inquiry to administer an oath, respectively, are repealed by the new Act. Apparently it is considered that the above-cited sections of the Public Health Act, 1875, are sufficient to cover all inquiries under the principal Act whether under section 16 of the principal Act or on the other hand under section 8 (3) or section 10 of that Act, which latter sections relate to inquiries directed by the confirming authority in response to a petition by the local authority for an order to be made confirming a scheme, and inquiries on refusal of the local authority to make an improvement scheme after an official representation has been made to them with a view to their passing a resolution in favour of such scheme, respectively.

Amendment as to the vesting of water pipes, etc.

27. An improvement scheme under Part I. of the principal Act may, with the consent of the person or body of persons entitled to any right or easement which would be extinguished by virtue of section twenty-two of the principal Act, provide for any exceptions, restrictions, or modifications in the application to that right or easement of that section, and that section shall take effect subject to any such exceptions, restrictions, or modifications.

Note.

Section 22 of the principal Act, as applied by section 39 (8) to reconstruction schemes under Part II. of that Act, provides for the extinction of all rights of way, rights of laying and continuing pipes, sewers and drains, and all other rights and easements relating to lands which are purchased by a local authority for the purpose of any such scheme, and for the vesting of the soil of such ways and the property in the pipes, sewers and drains in the local authority, subject to the payment by the authority of compensation to any persons or bodies of persons who sustain loss. The Board point out in their Memorandum that cases have arisen in which the operation of the section has been found inconvenient, as the effect was to vest—e.g., water-pipes—in the local authority, although they did not wish to acquire them, and the owner desired to retain them. The above section of the new Act enables the local authority, with the consent of the persons interested, to avoid such inconvenience.

This section, however, would not assist to remove the difficulty that arose in *Re Harvey* v. *London County Council* [1909], 7 L.G.R. 247, a decision on the measure of compensation for loss of right to air and light. That case decided that in computing the compensation payable under section 22 of the principal Act, for the extinction of an easement of light and air previously enjoyed by adjoining premises over lands acquired by a local authority under an improvement scheme made under Part I. of the Act, the arbitrator may not take into account the loss of trade and diminution in value of goodwill caused thereby to the tenant

SECTION 28. occupying the premises deprived of the easement, and evidence relating thereto is inadmissible before the arbitrator. In that case Neville, J. said: "It appears to me, taking sections 21 and 22 of the present Act [1890] together with clause 4 of the Second Schedule to the Act, that the compensation under section 22 is compensation not for lands compulsorily taken, but for lands injuriously affected; and whatever may be the rights of persons in the case of lands compulsorily taken under this Act, as to which I say nothing, I see nothing in the Act itself, or in the decisions on the Lands Clauses Consolidation Act, 1845, to indicate that under section 22 any claim can be established for loss of profit or goodwill."

Amendment of section 38 of the principal Act as to distribution of compensation money and as to betterment charges.

28.—(1) The amount of any compensation payable under section thirty-eight of the principal Act (which relates to obstructive buildings) shall, when settled by arbitration in manner provided by that section, be apportioned by the arbitrator between any persons having an interest in the compensation in such manner as the arbitrator determines.

(2) The power of the arbitrator to apportion compensation under the foregoing provision and to apportion any part of the compensation to be paid for the demolition of an obstructive building amongst other buildings under subsection (8) of the said section thirty-eight may be exercised in cases where the amount to be paid for compensation has been settled, otherwise than by arbitration under the principal Act, by an arbitrator appointed for the special purpose, on the application of the local authority, by the Local Government Board, and the provisions of that Act shall apply as if the arbitrator so appointed had been appointed as arbitrator to settle the amount to be paid for compensation.

Note.

Obstructive buildings.

"OBSTRUCTIVE BUILDINGS."

The meaning of this expression is to be gathered from section 38 of the principal Act, which as amended (see section 46 and Schedule II.) is as follows:—

Section 38 (1). "If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say—

(*a*) It stops *or impedes* ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or

(*b*) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings;

in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first mentioned building (in this Act referred to as "an obstructive building"), stating that in his opinion it is expedient that the obstructive building be pulled down."

Note. It will be seen on reference to section 46 and Schedule II. that the words " or impedes " have been added by way of amendment of the above subsection of section 38 of the principal Act. Any building or wall [*Ellis* v. *Plumstead Board of Works*, 68 L.T. 291 ; 57 J.P. 359] or edifice within the curtilage of, or forming part of, a house, will, if it impedes ventilation, fall within the scope of paragraph *a* of subsection (1) of section 38 of the principal Act.

(2) " Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

(3) " The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they decide to proceed, shall cause a copy of both the representation and report to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof ; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.

(4) " Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorized to purchase the lands on which the obstructive building is erected in like manner as if they had been authorized by a special Act to purchase the same ; and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act), and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5) " The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6) " The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this Act.

(7) " Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house or *other building or* manufactory to insist on his entire holding being taken where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or *other building or* manufactory without

SECTION 28. material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken, in addition to the value of that part."

NOTE. The words in italics have been added by this Act (see section 46 and Schedule II.) This amendment (as to powers of local authorities to acquire part only of an obstructive building where the arbitrator deems that part severable) is certainly called for by the whole tenor of section 38, which opens with the words "any building . . . so situate, etc." See also preceding note.

(8) "Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, shall so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

(9) "If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

(10) "Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

(11) "Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

(12) "A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place."

APPORTIONMENT OF COMPENSATION.

This section removes two defects in the machinery of section 38 of the principal Act, one of which, however, is rather caused by the policy of the new Act, which aims at centralizing and vesting final power in the Local Government Board. Subsection (6) of that section enacts that the amount of compensation payable where an order of the

local authority for pulling down an obstructive building is made and becomes finally operative shall in case of dispute be settled by arbitration, the arbitrator to be appointed by the Local Government Board. But there is no provision made as to apportionment so far as the case contemplated by this subsection is concerned—indeed, the subsection in question is incomplete in that it does not even provide for the case of several owners being successively interested in the building and site. The new section, therefore, will apply to such a case and the arbitrator will be empowered to apportion compensation as between the occupier and the owner, or the limited owner and the reversioner, as the case may be. Further, the apportionment may also be made by an arbitrator appointed ad hoc under subsection (2) of section 28 of the new Act on the application of the local authority; but it is to be noted that this arbitrator does not supersede an arbitrator appointed under the principal Act, but may only act in cases where the amount has been settled in some other way than by arbitration under that Act.

Again, the local authority may apply to the Local Government Board for an arbitrator to apportion the compensation which is payable as betterment charges or charges consequent upon the demolition of an obstructive building enhancing the value of other or adjacent buildings; and here, again, it is to be observed that this can only be done in the absence of an award by an arbitrator appointed pursuant to the provisions of the principal Act. It may be assumed that the powers of these arbitrators are concurrent with those of the two justices under subsection (9) of section 38 of the principal Act, which subsection enables two justices pursuant to their powers under the Lands Clauses Act to decide the amount to be apportioned.

Explanation of sections 21 (2) and 41 (3) of the principal Act.

29. For removing doubts it is hereby declared that a local authority may tender evidence before an arbitrator to prove the facts under the headings (first) (secondly) (thirdly) mentioned in subsection (2) of section twenty-one and subsection (3) of section forty-one of the principal Act, notwithstanding that the local authority have not taken any steps with a view to remedying the defects or evils disclosed by the evidence.

Note.

This section is merely declaratory of the law as to the evidence that may be adduced before an arbitrator appointed in pursuance of Part II. of the principal Act. The principal Act, section 21 (2), enacts that the amount of compensation payable in respect of lands compulsorily taken shall be reduced where the arbitrator is satisfied that the rental was enhanced by reason of illegal user of the premises, or by their being overcrowded, or a nuisance, or otherwise unfit for human habitation; and section 41 (3) applies the same principle where compensation is payable in respect of demolished unhealthy buildings. No doubt on general principles the local authority in the case put in the new section would seem to be estopped by their lax conduct; but at the same time they are not in the position of the litigant suing in respect of his own personal rights, but are acting in accordance with a duty imposed upon them.

SECTIONS 30, 31.

Amendments with respect to Financial Matters.

Amendment as to application of money borrowed for the purpose of the Dwelling-house Improvement Fund.

30. No deficiency in the Dwelling-house Improvement Fund shall be supplied under subsection (2) of section twenty-four of the principal Act out of borrowed money unless the deficiency arises in respect of money required for purposes to which borrowed money is, in the opinion of the Local Government Board, properly applicable.

Note.

"DWELLING-HOUSE IMPROVEMENT FUND."

This is a fund made up out of the receipts of a local authority under Part I. of the principal Act (which relates to the making of improvement schemes for "Unhealthy Areas"), including e.g. the proceeds of sales of land. The moneys required to establish the fund would, at its inception, be supplied out of loans or the local rates. It is to be observed that the combined effect of section 234 of the Public Health Act, 1895, and section 25 of the principal Act (applying the borrowing powers under the Public Health Acts to the Housing of the Working Classes Act, 1890) is to make it impossible to meet subsequent expenditure on improvement schemes out of money borrowed unless the purposes can be regarded as "permanent works." Whether all work done in the execution of an improvement scheme can be said to be "permanent," or all expense incidental thereto be regarded as incurred on permanent works, is a question to be decided on the circumstances of each particular case.

Subsection (2) of section 24 of the principal Act provides for the making up of deficiencies in the Dwelling-house Improvement Fund out of the local rates or out of loans; but it in no way specifies the nature of the expenditure or the purposes for which it has been incurred as to which recourse may be had to loans or the local rates. The present Act is no more explicit on this point, but no doubt any gross expenditure incurred for compensation, acquisition of land, costs of confirming authority, and costs of inquiries or any expenses properly incidental thereto would be allowed by the Local Government Board.

Expenses of rural district council under Part III. of the principal Act.

31.—(1) The expenses incurred by a rural district council after the passing of this Act in the execution of Part III. of the principal Act shall be defrayed as general expenses of the council in the execution of the Public Health Acts, except so far as the Local Government Board on the application of the council declare that any such expenses are to be levied as special expenses charged on specified contributory places, or as general expenses charged on specified contributory places, in the district, in such proportions as the district council may determine, to the exclusion of other parts of the district, and a rural district council may borrow for the purposes of Part III. of the principal Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses.

(2) The district council shall give notice to the overseers of any contributory place proposed to be charged of any apportionment made by them under this section, and the overseers, if aggrieved by the apportionment, may appeal to the Local Government Board by giving notice of appeal to the Board within twenty-one days after notice has been so given of the apportionment. SECTION 31.

Note.

EXPENSES.

Under section 65 (3) of the principal Act as amended by the Act of 1900, the expenses of a rural district council in the execution of Part III. of the principal Act were to be defrayed as special expenses in the execution of the Public Health Acts unless, on the application of the rural district council the county council declared that the expenses should be defrayed as general expenses of the rural district council in the execution of the Public Health Acts, with special provisions in case the expenses were to be borne wholly by certain contributory places regarded as if they constituted the whole of the district. The above subsection of the new Act repeals this amended subsection of the principal Act, and reverses the general principle, except in so far as the Board, on the application of the district council, declare otherwise. The jurisdiction of the county council in the matter is now abolished. Expenses.

In special circumstances the Local Government Board would be prepared to make an order under section 31 that the expenses incurred by a rural district council in connexion with a scheme under Part III. of the Act of 1890 should be levied on the contributory place as special expenses.

Contributory places, i.e.—

(i) Special drainage districts.
(ii) Rural Parishes situate entirely outside special drainage districts.
(iii) Such parts of parishes as are outside special drainage districts.

General Expenses are those payable out of a common fund to which each contributory place contributes in proportion to its assessable value out of the poor rate or out of a separate rate similar to the poor rate (subject to the provisions as to highway expenses and as to expenses under certain of the Elementary Education Acts).

Special Expenses are those chargeable on any one or more contributory places, and, with certain exceptions, payable out of rates from which certain classes of property are exempt to the extent of three-quarters of the full rate.

The net result of subsection (1) is that the expenses are to be paid out of the poor rate of all the parishes, unless on application in the manner specified, the Local Government Board declare that they shall be paid either (*a*) out of the poor rate of some one or more contributory places, or (*b*) out of a separate rate (see section 230 of the Public Health Act, 1875), levied on some one or more contributory places.

Borrowing.—See sections 233–243 of the Public Health Act, 1875. These loans will be raised on the credit of all the rates of the whole district and the consent of the Board is to be obtained in every case. It may be convenient to note here that section 233 of the Public Health Act, 1875, refers to "expenses incurred . . . in the execution of the Sanitary

SECTIONS 32, 33.

Acts or of this Act"; Sanitary Acts here includes the Artizans and Labourers Dwellings Act and the other Acts repealed and re-enacted in the Housing of the Working Classes Act, 1890. Section 234 limits the exercise of borrowing powers to loans for permanent works, which includes works of which the cost ought, in the opinion of the Board, to be spread over a term of years.

See section 3 and note thereon.

APPEAL.

As to procedure on any appeal to the Local Government Board under this part of the Act, see section 39, and as to rules with reference to appeal, see Appendix.

Application of proceeds of land sold under Part III. of the principal Act.

32. Where any land vested in a local authority for the purposes of Part III. of the principal Act is sold under section sixty of that Act (which relates to the sale and exchange of lands), the proceeds may be applied not only as provided by that section, but also for any purpose, including repayment of borrowed money, for which capital money may be applied, and which is approved by the Local Government Board.

Note.

Section 60 of the principal Act is as follows: "A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this part of this Act, either with or without paying or receiving any money for equality of exchange."

This section of the principal Act contains by implication a restriction; it does not expressly permit the proceeds of sale to be appropriated to any purpose other than that of purchasing other lands better adapted for the purposes of Part III. On the other hand, section 82 of the principal Act expressly provides that where a local authority sell any land acquired by them for *any* of the purposes of the Act, the proceeds shall be applied for any purpose, including repayment of borrowed money, for which capital money may be applied, and which is approved by the Local Government Board. The above section of the new Act removes this apparent anomaly.

Mode in which contributions by London borough councils to the County Council or vice versa may be made.

33. Any payment or contribution agreed or ordered to be made under subsection (6) or (7) of section forty-six of the principal Act, as amended by section fourteen of the Housing of the Working Classes Act, 1903 (which relate to payments or contributions by borough councils towards the expenses of the county council or by the county council towards the expenses of borough councils in London), may be made either by means of the payment of a lump sum or by means of an annual payment of such amount and for such number of years as may be agreed upon or ordered.

Note.

Section 46 (6) of the principal Act relates to contributions ordered by a Secretary of State to be made by metropolitan borough councils to the London County Council in respect of expenses of proposed schemes for reconstruction which are of some general importance to the county of London; subsection (7) is the converse case. Section 14 of the Act of 1903 provides for contributions by metropolitan borough councils to the London County Council for schemes of reconstruction and loans for purchase money or compensation in connexion with such schemes; and enacts that an order of the Secretary of State as provided by the principal Act, section 46 (6), (7) is necessary where the county and borough councils disagree. Subsection (1) of the same section applies the provisions of the Public Health Act, 1875, as to private improvement expenses. Section 213 of the Public Health Act, 1875, allows the expenses to be defrayed by the levy of private improvement rates.

As to the deduction from rent by the occupier of any private improvement rate paid by him, see section 214 of the Public Health Act, 1875; and as to the redemption of private improvement rates, see section 215.

The above section of the new Act removes doubts, and so far as the practice is concerned seems merely declaratory. The Home Secretary has more than once sanctioned agreements by councils to pay a lump sum.

Since the passing of the Housing of the Working Classes Act, 1903, the powers of the Secretary of State have been transferred to the Local Government Board (3 Edw. vii. c. 39, s. 2 and Order in Council of February 27, 1905).

Exemption from section 133 of 8 & 9 Vict. c. 18.

34. Section one hundred and thirty-three of the Lands Clauses Consolidation Act, 1845 (relating to Land Tax and poor rate), shall not apply in the case of any lands of which a local authority becomes possessed by virtue of the Housing Acts.

Note.

Section 133 of the Lands Clauses Act, 1845, provides that where promoters of undertakings become possessed of lands charged with land tax or liable to poor rate, they are to make good the deficiency in such tax and rate caused by the land being taken for their works. This imposed a serious restriction on the powers of local authorities in regard to housing matters, and afforded some justification for their apparent unwillingness to use their powers under the Housing Acts.

No doubt it is hoped by the Legislature that the loss in poor rate will be more than counterbalanced by the increased housing accommodation or other advantages accruing to the working classes by reason of the exercise by local authorities of their powers under the Housing Acts. There have in rural districts been many instances of persons evicted from cottages through no fault of their own and merely to make way for slightly better paying tenants, going straightway to the workhouses for the sole reason that there was absolutely no cottage accommodation for them of any kind whatever.

Exemption of lodging-houses for the working classes from Inhabited House Duty.

35.—(1) The assessment to Inhabited House Duty of any house occupied for the sole purpose of letting lodgings to persons of the working classes, at a charge of not exceeding sixpence a night for each person, shall be discharged by the Com-

SECTION 36. missioners acting in the execution of the Acts relating to the Inhabited House Duties, upon the production of a certificate to the effect that the house is solely constructed and used to afford suitable accommodation for the lodgers, and that due provision is made for their sanitary requirements.

(2) The provisions of subsection (2) of section twenty-six of the Customs and Inland Revenue Act, 1890, in relation to the certificate mentioned therein, shall, so far as applicable, apply to the certificate to be produced under this section.

Note.

Inhabited house duty.

The inhabited house duty is levied in pursuance of the House Tax Act, 1851, in the schedule of which will be found the scale of assessments. The tax is levied on the annual value of the premises which will be the rent and not the rateable value for poor rate purposes.

Section 26 of 53 & 54 Vict. c. 8 (Customs and Inland Revenue Act, 1890) reduces the house duty in the case of furnished lodgings, and subsection (2) of that section, as amended by sections 11, 17 and Schedule of 3 Edw. vii. c. 46, allows the Commissioners to remit the whole or part of the duty in the case of any house comprising separate dwellings of annual values not exceeding forty pounds, provided the house be so constructed as to afford suitable accommodation for each of the families or persons residing in it, and due provision is made for their sanitary requirements. This section of the new Act goes still further and exempts houses coming within the purview of the section altogether from assessment to inhabited house duty, but apart from the provisions as to certificate, the enactments above cited have nothing whatever to do with this section of the new Act (but see infra).

It will be the duty of the medical officer of health, on the request of a person liable to pay the duty who desires to claim exemption, to examine the house; and if it is constructed and used so as to afford suitable accommodation for the lodgers and due provision is made for their sanitary requirements, to certify to that effect.

Section 26 (2) of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8) so far as applicable to the above section, enacts that: "The medical officer of health of a district on request by the person who would be liable to pay the house duty on any house in the district . . . shall examine the house for the purpose of ascertaining whether such a certificate can properly be given, and if the house be constructed so as to afford such accommodation and due provision be made as aforesaid, shall certify the same accordingly; provided that the authority, if they are of opinion that the duties which would devolve on the medical officer of health under this section could not be performed by him without interference with the due performance of his ordinary duties, may appoint some other legally qualified medical practitioner having the qualification required for office of medical officer of health of the district to make such examinations and give such certificates as aforesaid.

General Amendments.

Power of entry.

36. Any person authorized in writing stating the particular purpose or purposes for which the entry is authorized, by the

local authority or the Local Government Board, may at all reasonable times, on giving twenty-four hours' notice to the occupier and to the owner, if the owner is known, of his intention, enter any house, premises, or buildings—

(*a*) for the purpose of survey or valuation, in the case of houses, premises, or buildings which the local authority are authorized to purchase compulsorily under the Housing Acts; and

(*b*) for the purpose of survey and examination, in the case of any dwelling-house in respect of which a closing order or an order for demolition has been made; or

(*c*) for the purpose of survey and examination, where it appears to the authority or Board that survey or examination is necessary in order to determine whether any powers under the Housing Acts should be exercised in respect of any house, premises, or building.

Notice may be given to the occupier for the purposes of this section by leaving a notice addressed to the occupier, without name or further description, at the house, buildings, or premises.

Note.

Power of entry.

The power of entry under the principal Act could only be exercised after the local authority had been authorized to acquire or purchase land compulsorily. They could only enter before a scheme under Part I. or II. was complete, (*a*) on permission from the occupier, or (*b*) under the Public Health Act, 1875, section 102, to investigate a nuisance, or (*c*) under Public Health (London) Act, 1891, sections 10, 115. The new section gives the power for the purpose of survey and examination, with a view to the local authority determining whether or not it will put the Housing Acts into force.

It may be noted that this section carries the power of entry further than section 77 of the principal Act (which is hereby repealed). That section gave a power merely to enter any dwelling-house which the local authority were authorized to purchase compulsorily, under either Part I. or Part II. of the Act. The above section gives the power of entry for survey and examination in the case of a dwelling-house *in respect of which a closing order has been made*, besides giving the like power for the purpose of determining whether any powers under the Housing Acts should be exercised. In the case of a house in respect of which a closing order has been made, the power of entry would not of course be for the purpose of valuation; but a survey would be necessary in order to determine what must or can be done to render the house fit for human habitation. It is clear also that if, where the closing order has been followed by a demolition order, the owner undertakes to execute forthwith the works necessary to render the house fit for human habitation (see section 18 (3)) the local authority could not be in a position to determine accurately whether the house could

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be rendered so fit unless a survey had been made. No doubt the local authority would in most cases where a closing order had been already made know what was necessary to be done, but experience has shown that a very considerable interval of time may elapse between the making of a closing order and the inception of the necessary repairs by the owner, during which interval the house may have undergone a very great change in condition.

See also section 15 (2) as to the power of entry given to the local authority or any person authorized by them " for the purpose of viewing the state and condition " of houses let to persons of the working classes, or rather houses of the rental values mentioned in section 14. Whether the power under that section differs from that under paragraph (*b*) or (*c*) of the above section is not clear. " View " and " survey " are synonymous terms, though the latter may be regarded as more specialized.

These is also power of entry given to county medical officers of health by subsection (4) of section 68.

Power of Local Government Board to obtain a report on any crowded area.

37. If it appears to the Local Government Board that owing to density of population, or any other reason, it is expedient to inquire into the circumstances of any area with a view to determining whether any powers under the Housing Acts should be put into force in that area or not, the Local Government Board may require the local authority to make a report to them containing such particulars as to the population of the district and other matters as they direct, and the local authority shall comply with the requirement of the Local Government Board, and any expenses incurred by them in so doing shall be paid as expenses incurred in the execution of such Part of the principal Act as the Local Government Board determine.

Note.

This section is supplementary to section 11 which empowers the Board to make orders for the carrying out by a local authority of their duties under Parts I. and II. of the principal Act. It refers generally to the Housing Acts and supplies by implication the omission from section 11 as regards Part III. In rural districts where cottage accommodation has always been notoriously scarce, few local authorities have adopted Part III. of the principal Act, which part empowers them to build cottages for labourers ; and in many instances the activity of parish councils has received a check by the refusal of the county council to give the necessary certificate. The provision as to requirement of a certificate has now been repealed. This section taken with sections 10 and 11 gives the Board a very necessary initiating power wherever there appears to them to have been any delinquency on the part of local authorities.

The marginal note to the above section refers only to crowded areas, but the section itself contains no such restriction. The marginal note is not part of the Act and therefore though the report to be made in pursuance of the section may be primarily concerned with density of population it may and should deal with any other circumstances that may call for the exercise by the local authority of their various powers under the Housing Acts.

It will be seen from the various cognate sections, 10, 11, 12, 13, 26 and this section that the Act supplies a system of mutual checks by one authority upon another with the object of securing that existing evils shall somehow be met. Presumably it is immaterial by what means the existence of evils may be brought to the notice of the Board, but no doubt the Board may act either solely upon their own initiative by instituting local inquiries, or upon complaint made whether by parish, district or county councils or by householders (see also section 85 of the principal Act, referred to in section 63).

"EXPENSES."

The manner of payment is by this section placed in the discretion of the Board. This, therefore, avoids any question as to whether the expenses have been incurred in and about permanent works. Presumably the general policy of the Act will be followed, and the expenses of the report will be defrayed as general expenses (see sections 13 (2) and 31 (1).

Joint action by local authorities.

38. Where, upon an application made by one of the local authorities concerned, the Local Government Board are satisfied that it is expedient that any local authorities should act jointly for any purposes of the Housing Acts, either generally or in any special case, the Board may by order make provision for the purpose, and any provisions so made shall have the same effect as if they were contained in a provisional order made under section two hundred and seventy-nine of the Public Health Act, 1875, for the formation of a united district.

Note.

Section 279 of the Public Health Act, 1875, provides as follows :—

"Where on the application of the local authorities of any urban or rural districts, or of any of such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places in any rural district or districts, to be formed into a united district for all or any of the purposes following; (that is to say,)

(1) The procuring a common supply of water; or

(2) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or

(3) For any other purposes of this Act;

the Local Government Board may by provisional order form such districts or contributory places into a united district.

All costs, charges, and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act."

Under this section of the Public Health Act as applied to the Housing Acts by the above section of the new Act, the original districts, though united for the special purpose of the Housing Acts, will remain distinct for all other purposes.

The united district will, for the purposes for which it was formed, be under the authority of a joint board, constituted in the manner determined by the Local Government Board.

The expenses of the joint board will, unless otherwise provided by

SECTION 39.

the provisional order, be defrayed out of a common fund, contributed to by the component districts in proportion to the rateable value of the property in each contributory place (section 283, Public Health Act, 1875).

Any sum mentioned in a precept addressed by a joint board to a contributory local authority may be recovered as a debt, and such contribution is in the case of a rural authority deemed to be general expenses (section 284, Public Health Act, 1875). (See also note to section 31 as to "contributory place.")

Apparently local authorities cannot act in concert without the authorization of a provisional order, or form joint committees under the Local Government Act, 1894, for the purposes of the Housing Acts, as almost any exercise of their powers under those Acts would necessitate borrowing money or making rates.

Appeals to Local Government Board.

39.—(1) The procedure on any appeal under this Part of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Note to Subsection (1).

This subsection gives the Local Government Board absolute discretion as regards costs, and there is no appeal from their decision. Cases have occurred in which the Board have refused costs to a successful appellant.

The rules framed by the Board under this section with regard to the procedure on appeals to them under the Housing Part of this Act will be found in Appendix B, p. 246.

The Instructions of the Local Government Board as to the conduct of Inquiries by their Inspectors under this section will be found in Appendix I., p. 295.

As to paragraph (*b*) see rule 9. Apparently this rule cannot be dispensed with, as the above paragraph specifically provides for its inclusion.

Note to Subsection (2).

"TIME WITHIN WHICH AN APPEAL CAN BE HEARD."

Notice of appeal by a landlord against a demand for recovery of expenses of local authority in repairing a house or against a notice to execute works, must be given within twenty-one days after the demand is made or the notice to execute works is received (section 15 (6). The time given to overseers within which to appeal against apportionment of expenses of the rural district council in connexion with working-class lodging-houses is also twenty-one days, counting from the date on which notice of the apportionment is given (section 31 (2). The same period is given to the owner in which to appeal against a demolition order; but he is given only fourteen days in which to appeal against a closing order (sections 18 (4), 17 (3).

Note to Subsection (3).

See rule 7.

And as to the costs of and incidental to an appeal, see rule 8. These costs will usually be borne by the person or party by whom they were incurred. But, as the rule points out, the Board have a discretion in the matter conferred by subsection (1) of this section.

Sale and disposal of dwellings.

40. Notwithstanding anything contained in the principal Act it shall not be obligatory upon a local authority to sell and dispose of any lands or dwellings acquired or constructed by them for any of the purposes of the Housing Acts.

Note.

Section 12 (5) of the principal Act enacted: "If the local authority erect any dwellings out of funds to be provided under this Part of this Act, they shall, unless the confirming authority otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof." This subsection is therefore repealed by the above section. It is obviously a beneficial thing for a local authority to own in perpetuity cottage property erected at the expense of the rates or rather from the Dwelling-House Improvement Fund, which fund is itself supplied out of the local rates or moneys borrowed in pursuance of the principal Act; for when the loan is paid off, the houses become a source of revenue to the district generally.

SECTION 41.

Power to prescribe forms and to dispense with advertisements and notices.

41.—(1) The Local Government Board may by order prescribe the form of any notice, advertisement, or other document, to be used in connexion with the powers and duties of a local authority or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable.

(2) The Local Government Board may dispense with the publication of advertisements or the service of notices required to be published or served by a local authority under the Housing Acts, if they are satisfied that there is reasonable cause for dispensing with the publication or service.

(3) Any such dispensation may be given by the Local Government Board either before or after the time at which the advertisement is required to be published or the notice is required to be served, and either unconditionally or upon such conditions as to the publication of other advertisements or the service of other notices or otherwise as the Board think fit, due care being taken by the Board to prevent the interests of any person being prejudiced by the dispensation.

Note.

For forms of notices, advertisements, and other documents, see Appendix.

This section extends to all parts of the Housing Acts, 1890–1909, and supersedes sections 27 and 28 of the principal Act, which gave similar powers to the Board as regards Part I. of that Act only. Those sections are therefore repealed, and the Home Secretary no longer has power concurrently with the Local Government Board to issue forms of advertisements and notices.

The notices must be signed by the clerk to the local authority or by his lawful deputy (section 86 (2) of the principal Act). As to service of notices required to be served on a local authority (e.g., under section 15 (4)) section 87 of the principal Act provides as follows: "Any notice . . . required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act or any of them, may be served upon that authority by delivering the same to their clerk or leaving the same at his office with some person employed there." See also section 15 (8) as to mode of service of notice on a landlord or owner of a dwelling-house by a local authority in connexion with keeping houses in repair; and section 36 as to mode of service of notice on an occupier declaring the intention of a person authorized to enter a dwelling-house to view the state and condition of the house.

The dispensation given by subsection (2) of the above section is no doubt intended merely to obviate unnecessary delay by reason of technical mistakes, and not to excuse any substantial omission to comply with the provisions of the Housing Acts.

Provision as to publication in *London Gazette*.

42. Where under the Housing Acts, any scheme or order or any draft scheme or order is to be published in the *London Gazette*, or notice of any such scheme or order or draft scheme or order is to be given in the *London Gazette*, it shall be sufficient in lieu of such publication or notice to insert a notice giving short particulars of the scheme, order, or draft, and stating where copies thereof can be inspected or obtained in two local newspapers circulating in the area affected by the scheme, order, or draft, or to give notice thereof in such other manner as the Local Government Board determine.

Note.

The *Edinburgh Gazette* is substituted for the *London Gazette* as regards Scotland, by section 96 (3) of the principal Act.

Prohibition of back-to back houses.

43. Notwithstanding anything in any local Act or bye-law in force in any borough or district, it shall not be lawful to erect any back-to-back houses intended to be used as dwellings for the working classes, and any such house commenced to be erected after the passing of this Act shall be deemed to be unfit for human habitation for the purposes of the provisions of the Housing Acts.

Provided that nothing in this section—

(*a*) shall prevent the erection or use of a house containing several tenements in which the tenements are placed back to back, if the medical officer of health for the district certifies that the several tenements are so constructed and arranged as to secure effective ventilation of all habitable rooms in every tenement; or

(*b*) shall apply to houses abutting on any streets the plans whereof have been approved by the local authority before the first day of May nineteen hundred and nine, in any borough or district in which, at the passing of this Act, any local Act or bye-laws are in force permitting the erection of back-to-back houses.

Note.

This prohibition has reference to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings. It has for years been regarded as so absolutely essential to the healthiness of domestic buildings to have adequate open space at the rear that nearly every set of building bye-laws has been found to include a regulation for securing that object. The expression "back-to-back houses" indicates those undesirable arrange-

ments where houses are constructed without any space in the rear or any windows except in the front walls so that there is no possibility of any through ventilation from front to rear. There is no statutory definition of "back-to-back" houses, but the intention is to prohibit the construction of houses of the class above described when proposed to be erected backing on one another. This prohibition will apply all over the country both in districts where the byelaws by requiring open space in the front as well as in the rear of every dwelling indirectly prohibit such erections, but in all other places as well. But it is to be noted that where there are no bye-laws the erection of houses one room in depth where there is no back yard and no windows at all in the rear walls would not be prohibited if they did not back on similar houses and thus become "back-to-back" houses. The Local Government Board have for many years discountenanced this system of construction and now for the first time it has been prohibited by the general law. The evils attendant on back-to-back houses are fully set out in a Report to the Local Government Board by Dr. Barry and Mr. P. Gordon-Smith, issued in February, 1888.

Power to Local Government Board to revoke unreasonable byelaws.

44. If the Local Government Board are satisfied, by local inquiry or otherwise, that the erection of dwellings for the working classes within any borough, or urban or rural district, is unreasonably impeded in consequence of any byelaws with respect to new streets or buildings in force therein, the Board may require the local authority to revoke such byelaws or to make such new byelaws as the Board may consider necessary for the removal of the impediment. If the local authority do not within three months after such requisition comply therewith, the Board may themselves revoke such byelaws, and make such new byelaws as they may consider necessary for the removal of the impediment, and such new byelaws shall have effect as if they had been duly made by the local authority and confirmed by the Board.

Note.

The essential thing in the matter of putting into execution Part IV. of the principal Act is to reduce the cost of building the dwellings, especially in agricultural districts, where the rate of wages, and consequently the rents, run very low. (Reference to the notes to section 55 (2) of this Act will show how the cost of estate development can be reduced by relaxing the requirements of the more stringent byelaws as to road construction, thickness of walls, etc.) As to what byelaws in the model code do "unreasonably impede" the erection of dwellings for the working classes, is a question dependent on the terms of the byelaws in use in any particular district.

Saving of sites of ancient monuments, etc.

45. Nothing in the Housing Acts shall authorize the acquisition for the purposes of those Acts of any land which is the site of an ancient monument or other object of archæological interest, or the compulsory acquisition for the purposes of Part III. of the Housing of the Working Classes Act, 1890, of any

land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or which at the date of the order forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house. SECTION 46.

Note.

"LAND WHICH IS THE PROPERTY, ETC."

A local authority can of course appropriate its own land for the purposes of Part III. of the principal Act, and railway companies, dock or harbour companies may be assumed to have regard to the interests of their own employees in the matter of erection of dwellings. Section 67 of the Act of 1890 encourages the latter bodies in this sphere of their activities by empowering them to borrow money from the Public Works Loan Commissioners.

See section 4 and note thereto, citing section 67 of the principal Act. Section 68 of the principal Act enacts as follows: "Any railway company or dock or harbour company or any other company, society, or association established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the working class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorized at any time to erect, either in their own land or on any land (which they are hereby authorized to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the working class employed by them."

Minor amendments of Housing Acts.

46. The amendments specified in the second column of the Second Schedule to this Act, which relate to minor details, shall be made in the provisions of the Housing Acts specified in the first column of that Schedule, and section sixty-three of the principal Act (which relates to the disqualification of tenants of lodging-houses on receiving poor relief) shall be repealed.

Note.

Section 23 of the principal Act is now to be read thus: "A local authority may, for the purpose of providing accommodation for persons of the working class displaced *in consequence of* [instead of 'by'] any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient." This amendment is presumably intended to meet such a case as that of persons inhabiting houses not situate in the area included in the scheme, but who, by reason of the renewal of some insanitary building at which perhaps they found work, have found it impossible to continue in their former dwellings. A similar amendment has been introduced to section 40 which now reads: "The Local Government Board shall in any order sanctioning a scheme under this Part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced in consequence of the scheme [i.e., reconstruction scheme] as seem to the Board required by the circumstances."

SECTIONS 47–48.

Section 35 (1) of the principal Act will now read: "Any person aggrieved by an order [i.e., demolition order] of the local authority under this part of this Act may, if he is not entitled to appeal to the Local Government Board against the order, appeal against the same to a Court of Quarter Sessions, etc." There are now concurrent rights of appeal; but it is to be observed that the appeal to quarter sessions will only lie where the person aggrieved is not entitled to appeal to the Board, as, e.g., by allowing the twenty-one days' period for giving notice to expire without giving notice. Moreover, the right of appeal to the Board appears to be limited to the owner only [as to meaning of "owner," see notes to sections 16 and 17], whereas the appeal to quarter sessions is open to "any person aggrieved." Lessees who are not also "owners" would be persons aggrieved within the meaning of the section.

The "person aggrieved" has one month after notice of the demolition order has been served upon him, in which to appeal to quarter sessions (section 35 (2) (*a*) of the principal Act).

Section 85 of the principal Act, which has reference to persons interested beneficially in any dwelling-house, building, etc., voting as members of a local authority or county council upon any resolution, prohibits the vote in respect only of resolutions in pursuance of Parts I. and II. of the principal Act. The present Act includes Part III. also.

Section 89 of the principal Act, which imposes a penalty for obstructing the medical officer, or any officer of the local authority or of the confirming authority, in the execution of the Act, is amended so as to include among persons obstructed "any person authorized to enter dwelling-houses, premises or buildings in pursuance of this Act." This amendment is rendered necessary by sections 15 (2), 16 (2) and 36 of the new Act.

Definitions.

Provisions of this Part to be deemed to be part of the appropriate Part of the principal Act.

47.—(1) Any provisions of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained.

(2) Any reference in the Housing Acts to a closing order or to an order for the demolition of a building shall be construed as a reference to a closing order or an order of demolition under this Act.

Amendment of definitions in Part I. of the principal Act.

48. The expression "street" shall, unless the context otherwise requires, have the same meaning in Part I. of the principal Act as it has in Part II. of that Act, and shall include any court, alley, street, square, or row of houses.

Note.

This is obviously a popular definition of "street," and is far more restricted in its meaning or rather in what it includes than the same word in the Public Health Acts. Under the Public Health Act, 1875, "street" includes "any highway and any public bridge (not being a county bridge) and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not." There are numerous reported

decisions on this comprehensive definition, but it will serve no purpose to cite them here, inasmuch as the definition for the purposes of the Housing Acts is essentially a definition which contemplates the exercise by local authorities of powers in connexion solely with dwellings.

The application of the definition to Part I. is rendered necessary by the omission of any definition in section 2 of the principal Act notwithstanding references to "streets" in sections 4 and 12. It may be assumed that the word has the same meaning in Part III. The omission of any reference to Part III. from this section of the new Act is curious in view of the powers given to local authorities by section 6.

This definition doubtless includes private as well as public streets.

"UNLESS THE CONTEXT OTHERWISE REQUIRES."

Section 12 (3) of the principal Act which contemplates a more restricted use of the word "street" in relation to the execution of improvement schemes by the local authority runs: "The local authority may also engage with any body of trustees . . . to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves without the express approval of the confirming authority, undertake the re-building of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets repairable by the same authority as other streets in the district."

Amendment of definitions for purpose of Part II. of the principal Act.

49.—(1) The words "means any inhabited building and" shall be omitted from the definition of "dwelling-house" in section twenty-nine of the principal Act.

(2) For the definition of owner in the same section the following definition shall be substituted:—

> "The expression 'owner,' in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this Part of this Act, except persons holding or entitled to the rents and profits of such premises under a lease the original term whereof is less than twenty-one years."

Note to Subsection (1).

The definition is now to read: "The expression 'dwelling-house' includes any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined."

See also notes to section 17.

A mortgagee is an "owner" within this definition and can be served with a closing order and has a right of appeal against it.

Note to Subsection (2).

See notes to sections 16, 17, and 18.

SECTIONS 50, 51.

Definition of cottage.

50. For the definition of cottage in section fifty-three of the principal Act the following definition shall be substituted :—

The expression "cottage" in this Part of this Act may include a garden of not more than one acre.

Note.

There is no reference in this definition to "estimated annual value" as in the old definition, and it may be assumed that the annual value is immaterial.

The old definition was : "The expression 'cottage' in this part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds."

The purpose of the definition was to include "separate houses or cottages" in the expression "lodging-houses for the working classes," with of course special reference to rural districts. The phrase "estimated annual value" was unusual and vague, and probably meant no more than "annual value," which latter expression is well settled to mean "net annual value" or "rateable value." The addition of "estimated" probably implied that the rateable value of the garden, assuming there were no cottage, must not exceed £3. The old definition was no doubt by way of concession to the ratepayers ; but inasmuch as much cheaper money is now to be had under Part III. of the principal Act, by reason of the period during which loans may remain outstanding being increased to eighty years and the rate of interest lowered, there will not be likely to be much loss entailed on the rates by the erection of cottage property under Part III. In any event it is obvious they will let to better class tenants than agricultural labourers, while the latter will be able to occupy the dwellings formerly occupied by the better class tenants. Actuated probably by these reasons the Legislature now omits all reference to rateable or annual value.

Definition of Housing Acts.

51. In this Part of this Act the expression "Housing Acts" means the principal Act, and any Act amending that Act, including this Act.

Note.

See section 76. The "Housing Acts" now include : (i) the Housing Act, 1890 (53 & 54 Vict. c. 70) ; (ii) the Housing Act, 1894 (57 & 58 Vict. c. 55), which explains the borrowing powers of a local authority under a scheme for reconstruction by applying sections 43 and 46 of the principal Act ; (iii) the Housing Act, 1900 (63 & 64 Vict. c. 59), which facilitated procedure in the adoption of Part III. of the principal Act, by abolishing the need for a certificate of the county council, and repealed a part of section 65 of the principal Act so as to enable the expenses of adoption to be charged as ordinary instead of special expenses under the Public Health Acts (see note to section 1 supra) ; (iv) the Housing Act, 1903 (3 Edw. 7. c. 39), which made provision for the extension of the loan period ; (v) Part I. of the new Act.

Application of Part I. to Scotland.

Extension of 63 & 64 Vict. c. 59 and 3 Edw. 7. c. 39 to Scotland.

52. Subject as herein-after provided, the Housing of the Working Classes Act, 1900, and the Housing of the Working Classes Act, 1903, shall as amended by this Act apply to Scotland.

Note.

For the effect of the principal amendments in the application of the Housing Acts to Scotland see the notes to the next section.

An edition of the Housing Acts as applied to Scotland has been prepared by the Local Government Board for Scotland, and can be obtained from Messrs. Oliver & Boyd, Edinburgh, price 9*d*.

Application of Housing Acts to Scotland.

53. In addition to the provisions of the principal Act respecting the application of that Act to Scotland, the following provisions shall have effect in the application of the Housing Acts to Scotland :—

(1) The Local Government Board for Scotland (herein-after in this section referred to as the Board) shall, except as otherwise provided, be substituted for the Local Government Board, and shall also in Part III. of the principal Act as amended and in section five of the Housing of the Working Classes Act, 1900, be substituted for the county council :

(2) The Lord Advocate shall be substituted for the Attorney-General :

(3) The expression " Public Health Acts " means the Public Health (Scotland) Act, 1897, and any Act amending the same. References to the Public Health Act, 1875, shall, unless the context otherwise requires, be construed as references to the Public Health (Scotland) Act, 1897, a reference to an order under section eighty-three of the Public Health (Scotland) Act, 1897, shall be substituted for a reference to a provisional order under section two hundred and seventy-nine of the Public Health Act, 1875, and a reference to section seventy-two of the Public Health (Scotland) Act, 1897, shall be substituted for a reference to section ninety of the Public Health Act, 1875 :

(4) The reference in section fifty-seven of the principal Act to sections of the Public Health Act, 1875, relating to the purchase of lands, shall be construed as a reference to the corresponding sections of the Public Health (Scotland) Act, 1897 : Provided that for the purposes

SECTION 53.

of Part III. of the principal Act the procedure under section two of this Act for the compulsory purchase of land shall be substituted for the procedure for the compulsory purchase of land under section one hundred and forty-five of the Public Health (Scotland) Act, 1897:

(5) The district and the local authority for the purposes of the Public Health (Scotland) Act, 1897, shall respectively be the district and the local authority, and the public health general assessment shall be the local rate, for the purposes of the Housing Acts; provided that such local rate shall not be reckoned in any calculation as to the statutory limit of the public health general assessment; and provided further that a local authority not being a town council may, where so authorized by the Board in terms of the Housing Acts, assess and levy such local rate upon all lands and heritages within one or more of the parishes or special districts comprised in their district, to the exclusion of other parishes or special districts within the district:

(6) A local authority may, with the consent of the Board, borrow money for the purposes authorized in the Housing Acts on the security of the local rate in the same manner, and subject to the same conditions as nearly as may be, as they may brorrow for the provision of permanent hospitals under the Public Health (Scotland) Act, 1897; provided that all money so borrowed shall, notwithstanding the terms of section one hundred and forty-one of the said Act, be wholly repaid together with the accruing interest within such period not exceeding eighty years from the date of the loan as the Board may determine in each case:

(7) The expressions "urban sanitary authority" and "rural sanitary authority" or "rural district council" mean respectively the local authority (for the purposes of the Public Health (Scotland) Act, 1897) of a burgh and of a district not being a burgh, and the expressions "urban district" and "rural district" shall be construed accordingly:

(8) The Acts relating to nuisances mean as respects any

place the Public Health (Scotland) Act, 1897, and the Local Government (Scotland) Act, 1889, and any Act amending the same or either of them, and any local Act which contains any provisions with respect to nuisances in that place:

(9) Except so far as inconsistent with the provisions of subsection (1) of section eighty-five of the principal Act, sections seven, eight, nine, and ten of the Public Health (Scotland) Act, 1897, shall apply for the purpose of local inquiries ordered by the Board under the Housing Acts:

(10) Section one, subsection (1) of section four, and section ten of the Housing of the Working Classes Act, 1903, shall not apply. In the last-mentioned Act sections three and twelve shall apply with the substitution of the date of the passing of this Act for the date of the passing of that Act, and the Schedule shall apply with the modifications specified in the Third Schedule to this Act:

(11) Where a complaint is made to the Board—

(*a*) as respects the district of a local authority not being a town council, by the county council, or by the parish council or landward committee of any parish comprised in the district, or by any four inhabitant householders of the district; or

(*b*) as respects any other district by any four inhabitant householders of the district;

that the local authority have failed to exercise their powers under Part II. or Part. III. of the principal Act in cases where those powers ought to have been exercised, the Board may cause a public local inquiry to be held, and if, after holding such an inquiry, the Board are satisfied that there has been such a failure on the part of the local authority, it shall be lawful for the Board, with the approval of the Lord Advocate, to apply by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorized and directed to do therein and to dispose of the expenses of the proceedings as to the said Division or Lord Ordinary shall

SECTION 53.

appear to be just. Section ten of this Act shall not apply:

(12) Where it appears to the Board that a local authority have failed to perform their duty under the Housing Acts of carrying out an improvement scheme under Part I. of the principal Act, or have failed to make, or, if made, to give effect to, any order as respects an obstructive building, or any reconstruction scheme, under Part II. of that Act, or have failed to cause to be made the inspection of their district required by this Act, it shall be lawful for the Board to apply by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorized and directed as in the immediately preceding subsection. Section eleven of this Act shall not apply:

(13) Section twelve and section thirteen of this Act shall not apply:

(14) Sections fifteen, seventeen, eighteen, and thirty-nine of this Act shall apply with the substitution (except as regards the making of or consenting to regulations) of the sheriff for the Local Government Board and of the Court of Session for the High Court; provided that the reference to a public local inquiry shall not apply, and provided further that where an appeal is competent under any of these sections, an appeal shall not be competent under section thirty-five of the principal Act, and provided also that the power to make rules under section thirty-nine of this Act shall be exercised by the Court of Session by act of sederunt. Section one hundred and forty-six of the Public Health (Scotland) Act, 1897 (prescribing the procedure if a local authority neglect its duty, shall have effect as if the duties imposed upon a local authority by sections seventeen and eighteen of this Act were duties imposed by that Act:

(15) In the application to Scotland of section fourteen of this Act the limit of rent shall be sixteen pounds:

(16) References to special expenses shall not apply:

(17) "Overseers" means parish council, "paid into court"

means " paid into bank," " as a civil debt in manner provided by the Summary Jurisdiction Acts " means in a summary manner.

Note to Subsection (1).

The general effect of this subsection, together with subsections 7 and 13, is to repeal section 96 (1) of the principal Act, which enacted : (*a*) that the " Secretary for Scotland " should be substituted for the Local Government Board ; and (*b*) that, so far as the provisions with respect to the adoption and execution of Part III. by a local authority were concerned, the " district committee " should stand for " the rural sanitary authority " ; and (*c*) that the Board of Supervision for the Relief of the Poor in Scotland should be substituted for the county council in Part III.

The Act of 1900 is now extended to Scotland, but the above subsection substitutes the Board for the county council in section 5 of that Act as the authority having power to sanction leases for building lodging-houses.

Apparently the county council in Scotland is not entrusted with any powers under Part III. of the principal Act.

Note to Subsection (4).

This subsection repeals section 94 paragraph (*a*) of the principal Act which enacted that the Public Health (Scotland) Act, 1867, and Acts amending the same should be substituted for the reference to sections 175–178 of the Public Health Act, 1875, in section 57 of the principal Act.

Note to Subsection (6).

See note to subsection (10).

Note to Subsection (7).

See note to subsection (1).

This subsection repeals subsection (7) and (8) of section 96 of the principal Act, which defined " urban sanitary authority " as " the local authority under the Public Health (Scotland) Act, 1867, being a town council or police commissioners, or trustees exercising the functions of police commissioners," and " rural sanitary authority " as " district committee, or where a county has not been divided into districts, under the Local Government (Scotland) Act, 1889, the county Council." Schedule I. of the principal Act in so far as it relates to Scotland is repealed by this subsection.

Note to Subsection (8).

This subsection replaces subsection (4) of section 94 of the principal Act, which enacted that " the Acts relating to nuisances mean, as respects any place in Scotland, the Public Health (Scotland) Act, 1867, and any Act amending the same, and the Local Government (Scotland) Act, 1889, and any local Act, which contains any provisions with respect to nuisances in that place."

Note to Subsection (9).

Section 7 of the Public Health (Scotland) Act gives the Board power to authorize special inquiries ; section 8, to appoint commissioners with

SECTION 53. power to examine witnesses on oath for conducting such inquiries; section 9 to allow expenses of witnesses, and section 9 imposes penalties on persons giving false evidence or refusing to obey the summons of the Board. These sections appear to be inconsistent with section 85 of the principal Act (as amended) in regard to the provisions for recovery of expenses of the inquiry; for section 85 of the principal Act enacts that the Board may recover the costs of the inquiry, as a Crown debt, from the local authority and other persons engaged in the inquiry in such proportions as the Board may direct, whereas section 7 of the Public Health (Scotland) Act enacts that costs of inquiries are to be defrayed in the same manner as general expenses of the Board are now defrayed, and section 8 enacts that the commissioner shall be re-imbursed by the Board.

This subsection therefore repeals section 94 paragraph (*b*) of the principal Act which enacted that local inquiries by the Board of Supervision should be held under the Public Health (Scotland) Act, 1867, and local inquiries by the Secretary for Scotland under the Local Government (Scotland) Act, 1889. But the remainder of that paragraph enacting that the provisions of subsection (1) of section 85 of the principal Act should apply to inquiries by the Board of Supervision is substantially re-enacted by the above subsection of the new Act, except that for the Board of Supervision is substituted "Local Government Board for Scotland."

Note to Subsection (10).

Section 1 (1) of the Act of 1903 extends the maximum term for the repayment of loans from sixty to eighty years (see note to section 3), thus amending section 234 of the Public Health Act, 1875, and section 1 (2) enacts that money borrowed shall not be reckoned as part of the debt of the local authority for the purposes of the limitation on borrowing under section 234 (2) and (3) of the Public Health Act, 1875.

The maximum term for repayment of loans in Scotland is, however, eighty years (see subsection (6), thus amending section 141 of the Public Health (Scotland) Act, 1897, which limited the period to thirty years. It is submitted that a subsection, analogous to subsection (2) of section 1 of the Housing Act of 1903 would be read into the Public Health (Scotland) Act, 1897. It is further submitted that there is nothing in the above section of the new Act to make section 3 applicable to Scotland as to advances by the Public Works Loan Commissioners. Whether section 96 (2) of the principal Act (which applied those sections of the Public Health (Scotland) Amendment Act, 1871, to those sections of the principal Act which relate to borrowing powers) implied the application of section 142 of the Public Health (Scotland) Act, 1897 (which deals with the power of the Public Works Loan Commissioners to lend to local authorities for sanitary purposes, limiting the term of repayment to thirty years) is immaterial, as the new Act repeals section 96 (2) of the principal Act, without substituting anything more definite as to the application of the Act of 1897.

The effect of this subsection is to repeal section 3 of the Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1896.

Section 4 (1) of the Act of 1903 relates to the powers of the Local Government Board on a report made to them after a local inquiry under section 10 of the principal Act (dealing with inquiries where the local authority refuse to make an improvement scheme) to order the

local authority to make an improvement scheme either under Part I. or Part II. of the principal Act (as to improvement scheme under Part II., see section 39 of the principal Act) and to enforce that order, if necessary, by mandamus. This section does not apply to Scotland, subsection (12) of this section of the new Act being in substitution therefor, and for section 11 of the new Act.

Section 10 of the Act of 1903, by applying sections 138–145 of the County Courts Act, 1888, and the Small Tenements Recovery Act, 1838, gives the machinery for enabling the local authority to recover possession of dwelling-houses from occupying tenants where closing orders have been made, and the tenant makes default. Presumably the machinery provided by section 17 (4) of the new Act is in substitution therefor.

The provisions as to providing new dwelling accommodation for persons of the working class evicted as a consequence of the acquisition of land under the Housing Acts or any general Act which are to be found in section 3 of the Act of 1903, including the Schedule as modified by Schedule III. of the new Act, apply to Scotland as from December 3, 1909. Similarly with section 12, which enacts that section 75 (see notes to section 15) of the principal Act shall take effect notwithstanding any agreement to the contrary.

Subject to these exceptions and modifications, the Act of 1903 is now made applicable to Scotland.

TOWN PLANNING.

PART II.

Preliminary.

As regards the nature and purpose of town planning schemes, the statutory enunciation of which is set out in subsection (1) of this section, it may be observed that though the provisions as to town planning as formulated in this Act are novel, the general idea of town planning is not only familiar on the Continent, but instances giving the very results aimed at in this Act are to be found in this country, e.g., garden cities. Moreover, much in the way of what it is hoped will be done under this Act has already been effected in the Metropolis by means of the powers conferred by the London Building Act, 1894. Part II. of the new Act may be looked upon as the first step in the direction of the universal extension of the London Building Act, 1894, to every local authority in the United Kingdom. But Part II. also goes further than this, for in its general object, which may be interpreted to be the regulation and control of the unconscious and chaotic growth of buildings on the outskirts of towns, is introduced the consideration of "amenity." This word, if attention be paid to the general tenor of Part II. of this Act, would appear to indicate that in developing land, whether by the construction of dwellings, or factories, or canals, or railways, provision should be made in the planning scheme for parks, open spaces, or recreation grounds, in juxtaposition with the dwellings, factories, etc., in such manner that the latter may be made attractive to the districts through which they pass instead of, as in many districts, at present offering instances of intolerable meanness and squalor. Town planning schemes are expected to prove useful in solving the difficulty of uncontrolled building operations by the opportunity they will offer of getting together the various interests affected by the

SECTION 54. schemes, for example, the local landowners, railway and canal companies, public authorities and officials of public authorities, affording these various interested parties an opportunity of co-operating in the attainment of a single purpose by adherence to the provisions of a scheme, instead of, as hitherto, each body conducting its own particular operations with the least possible regard to the co-existence of the operations of the other bodies.

In the notes to section 55 (1), sub nom. "General objects of town planning schemes," an attempt has been made to convey some idea of the aims or ideals of town planners, and it has been carefully pointed out in those notes that though the various suggestions as to open spaces, main arteries, thickness of walls, relative positions of different sorts of buildings, and so forth, are not expressly warranted by the Act, yet it is to be gathered by implication from sections 54, 55, and 59 (2), that such desiderata could quite legally be incorporated in a scheme. Mr. Burns, in introducing the Bill to the House of Commons, said that Part II. of the new Act might be looked upon as the first step in the direction of the universal extension of the London Building Act, 1894, to every local authority in the United Kingdom. That is true enough, but is a misleading statement, for it implies or seems to imply, that Part II. goes no further. If it went no further, then, beyond making it possible for local authorities to make byelaws framed upon Part V. of the London Building Act, as to open spaces about buildings and height of buildings (see notes to section 59 (2), and upon a few matters in regard to street construction of comparative insignificance, this part of the Act would, so far as the idea of town planning is concerned, be a *fulmen brutum*. Part V. of the London Building Act, in prescribing, e.g., an aggregate extent of not less than 150 square feet for open spaces at the rear of buildings, is directed solely to purposes of ventilation or, its generic, sanitation. And that is the case as regards all the provisions of the London Building Acts. It would be absurd to attempt to introduce notions of "amenity" (as to the meaning of which see section 54 (1), into building operations in the heart of London except so far as undeveloped land is included in these operations. The London Building Acts appear, therefore, to recognize the fact that so far as the more populous districts of London are concerned, the harm is done and town planning schemes impossible. One cannot so disturb existing vested interests, apart altogether from the enormous cost of land in the metropolitan boroughs, as to insist upon restricting the number of houses to the acre, the construction of wide main arteries, etc. Such considerations would entail much demolition and clearing of areas at a cost which would burden the rates to an enormous extent. Moreover the open spaces about buildings, which are spoken of in Part V. of the London Building Act, 1894, have no reference to public open spaces. There is, in short no consideration of amenity, as meaning that which is agreeable or pleasing to the eye, in the provisions of that Act. Part II., in its inherent possibilities, goes very much further than the London Building Acts.

Town planning.

Indeed, there is hardly any affinity at all between these Acts and this part of the new Act. Town planning is not concerned merely with a sufficiency of ventilation about domestic buildings or height of buildings with reference to rear space; these latter provisions, though well in their way, do not touch the fringe of the problem of housing reform; they are of a tinkering and meticulous kind, and effect nothing towards the accomplishment of these comprehensive schemes which have for their object the correlation, along hygienic and agreeable lines, of all the parts of a town. The London Building Acts and for that matter all the Public Health legislation, contain no provisions in any way approaching the town planner's object of securing the building up of

houses or town extensions with an eye from the very commencement to the ultimate development of that town. SECTION 54.

Town planning aims at securing harmonious co-operation as between different owners simultaneously developing their different parcels of land situate in the vicinity of the same town. Hitherto it has never been thought necessary for any one owner to concern himself with the operations of his neighbour. The result is the hideous ugliness of most of our modern towns, in parts of which the villas or houses of the well-to-do, factories, shops, railway embankments, warehouses, hospitals, slum dwellings, municipal tenements, gasometers, sewage disposal works, etc., are herded together in a heterogeneous mass.

Whether anything will be accomplished, depends entirely on the extent to which owners and local authorities show themselves to be disposed to co-operate with one another. The experiences of parish councils in their endeavours to induce rural districts to adopt Part III. of the principal Act, where the latter seem invariably sympathetic to the interests of landowning county councillors, has not been so encouraging as to lead one to hope for very enthusiastic co-operation. Much, however, in the last resort may be accomplished through inquiries under section 61 (q.v. and notes). In all probability the earlier schemes (that of the Duchy of Lancaster though good enough in view of the poor potentialities of the material, is no more than might have been done under an improvement scheme under the principal Act, Part I.), will be "adopted" schemes (see note to section 54 (2); and though they can of course be proceeded with independently of the Act, after the manner of the garden city, Hampstead Tenants, or any of the other well-known instances, some of them would undoubtedly be more genuinely town planning schemes as distinct from mere devices for securing cheaper and more agreeable dwelling accommodation, and all would gain from the business point of view, were the co-operation of the local authority invited. Town planning.

Roughly speaking, the initiation and execution of a town planning scheme will involve these steps: resolution of the local authority to apply for an authorization to prepare a scheme, service of notice on the local landowners, an inquiry at which the owners, local authority, rate-payers, architects and engineers will have power to make representations, submission to the Local Government Board of plans and estimates, and publication of notices; then, after the authorization is received, the following steps during and after the preparation of the scheme: submission to the Board of the proposed scheme with plans and estimates, publication of notice of such submission, and a conference at which every one affected, landowners, local authorities, ratepayers, engineers and persons representing architectural or archæological societies will be able to make any objections or representations. Finally, after the Board have approved of the scheme, notice of such approval, and inquiries and reports as to the inception, progress and completion of works. There may also be further conferences, section 56 providing for the securing co-operation on the part of all persons interested in the land by means of conferences at every stage of the proceedings.

See notes to section 56 and regulations in the Appendix.

In some ways it seems regrettable that the regulations are so cumbrous. They appear to consist of a veritable jungle of maps, notices, advertisements, draft schemes, draft orders, resolutions, copies of documents, etc. Of course it is necessary to give persons interested or owning land affected by a proposed scheme, ample and continuous notice of what is intended, in order to keep down the claims for compensation that will ultimately be preferred. Whether, however, such an army of maps is absolutely necessary, or whether the progress of a reasonable and necessary scheme will be facilitated by the observance

SECTION 54.

of so many regulations, is doubtful. [The regulations will be found set out more briefly in the note to section 56 (1).]

Intervening landowners, it may be here observed, or landowners preferring unreasonable objections will, in the last resort, have notice served upon them for the compulsory purchase of their land or property upon fair and reasonable terms.

As to the acquisition by the local authority, generally, of land included in a scheme, see section 60, and note thereto.

Town Planning.

Preparation and approval of town planning scheme.

54.—(1) A town planning scheme may be made in accordance with the provisions of this Part of this Act as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands.

(2) The Local Government Board may authorize a local authority within the meaning of this Part of this Act to prepare such a town planning scheme with reference to any land within or in the neighbourhood of their area, if the authority satisfy the Board that there is a primâ facie case for making such a scheme, or may authorize a local authority to adopt, with or without any modifications, any such scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorized to prepare a scheme.

(3) Where it is made to appear to the Local Government Board that a piece of land already built upon, or a piece of land not likely to be used for building purposes, is so situated with respect to any land likely to be used for building purposes that it ought to be included in any town planning scheme made with respect to the last-mentioned land, the Board may authorize the preparation or adoption of a scheme including such piece of land as aforesaid, and providing for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect.

(4) A town planning scheme prepared or adopted by a local authority shall not have effect, unless it is approved by order of the Local Government Board, and the Board may refuse to approve any scheme except with such modifications and subject to such conditions as they think fit to impose :

Provided that, before a town planning scheme is approved by the Local Government Board, notice of their intention to do so shall be published in the *London* or *Edinburgh Gazette*, as the case may be, and, if within twenty-one days from the date of such publication any person or authority interested objects in the prescribed manner, the draft of the order shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and, if either of those Houses before the expiration of those thirty days presents an address to His Majesty against the draft, or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft scheme.

(5) A town planning scheme, when approved by the Local Government Board, shall have effect as if it were enacted in this Act.

(6) A town planning scheme may be varied or revoked by a subsequent scheme prepared or adopted and approved in accordance with this Part of this Act, and the Local Government Board, on the application of the responsible authority, or of any other person appearing to them to be interested, may by order revoke a town planning scheme if they think that under the special circumstances of the case the scheme should be so revoked.

Building land.

(7) The expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not, and the decision of the Local Government Board, whether land is likely to be used for building purposes or not, shall be final.

Note to Subsection (1).

"LAND . . . LIKELY TO BE USED FOR BUILDING PURPOSES."

This description presents a difficulty at the outset. Almost all the land in the environment of towns can be said to be in course of development, or likely to be built upon sooner or later. It is for the Board, however, to decide the question and their decision will be final (see subsection 7).

There is no statutory limitation as to the size of the area to which a town planning scheme could be applied, and a scheme could be made for a small area if good reasons could be shown which would satisfy the Local Government Board as to the need for a scheme.

The object of a town planning scheme is to determine in certain

SECTION 54. respects the manner in which the area included in the scheme shall be developed wherever it is developed, and a scheme would become operative as soon as it had been approved.

In subsection (7), the definition of the expression, "land likely to be used for building purposes" is so wide, that it includes all that town planners might hold desirable, so far as building in and around urban areas is concerned. Whether, as regards rural areas, there is either in this subsection or elsewhere in this Act anything to enable the local authority to secure the preservation of an agricultural belt, except by accident, is another matter. The great difficulty in the whole of Part II. is, as is pointed out, in the preliminary note, that the power of the local authority is directional only and not creative. There is no limit, it is true, on the amount of land to be included in the scheme—entire dependence being placed upon the local authority itself—but however great the extent of land included, it must fall within the definition "land in course of development or land likely to be used for building purposes," unless, of course, the local authority can persuade the Board that the inclusion of other and adjacent land, which is not likely to be built upon, is essential to the success of the scheme (see subsection 3).

Building land.

[See notes to section 55 as to contents of town planning schemes, and preliminary note.]

A narrow construction of the words in this subsection would, it is submitted, involve the frustration of the objects of this part of the Act; for, unless ample provision is made for the laying out of broad outlets from provincial towns to the outlying country, and for through means of communication with a view ultimately to cheap and rapid means of transit, the old evils of a large surplus of poorer inhabitants being forced from the centre outwards to the fringe of the district without relation to their comfort and requirements will remain.

In their circular, dated May 3, 1910, the Board say that "under section 54 (1) of the Act, read with section 55 and the Fourth Schedule and section 59 (2) it would be practicable to include in a town planning scheme provisions restricting the use of certain areas of land to specified purposes, and it will be seen that the regulations recognize the possibility of provisions of this character. To what extent the power should be used will be a matter for very careful consideration in each case, and the provisions of section 58 and 59 of the Act in regard to compensation should be borne in mind in connexion with the matter. The Board refer to this point at the present time as they understand that some doubt has been expressed whether the Act authorizes the inclusion in a scheme of provisions such as are here referred to." It need hardly be said that the Board refer to open spaces, the preservation of objects of historical interest or natural beauty [see Schedule IV. 3 and 4], the provision of broad main roads, accommodation for the working classes, and buildings generally [Schedule IV. 1 and 2], and though the circular appears to hint at these matters in a somewhat incidental and tentative manner, they are of course the very essence of any town planning scheme which is intended to be anything more than a small improvement scheme. The circular seems to indicate that local authorities have felt some doubt as to the legality of including provisions restricting certain areas to specified purposes, and in the absence of legal decisions on the subject, it is quite impossible to say how far a scheme may or may not endeavour to secure the results aimed at by all town planners. These results and the objects of town planning will be found dealt with in considerable detail in the notes to section 55, and it is carefully pointed out there that it must not be supposed that the Board has yet made provisions or can make provisions for

effecting the various matters there described. The Act, however, in defining the objects or contents of town planning schemes, both in the above subsection and in section 55, and in Schedule IV., is so comprehensive in wording as to make it appear possible to do almost anything subject to the payment of compensation. Section 59 (2) (referred to in the above extract from the Board's circular) excludes compensation as to property affected by provisions which "with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for the purpose." This subsection, of itself, certainly does not give any authority to include in schemes provisions as to all open spaces, public as well as private, and wide main arteries—two of the essentials (see notes to subsection (2) of section 55) of town planning; but it undoubtedly implies that the legislature contemplates the possibility of the inclusion of provisions restricting the kind of buildings to be erected on any particular part of the area included.

It may be noticed here that the expression "open spaces about buildings" is to be found in the heading to Part V. of the London Building Act, 1894, (57 & 58 Vict. c. ccxiii.). Section 41 of that Part of that Act, relating to the space at the rear of domestic buildings, says :— "There shall be provided in the rear of every such building an open space exclusively belonging to such building, and of an aggregate extent of not less than one hundred and fifty square feet" and section 42 provides for open spaces about dwellings for working classes not on the public way. It is submitted that there is nothing in the London Building Act, 1894, to justify the local authority in insisting upon "public open spaces." This Act is wider in its scope, however, than the London Building Acts, and indeed the word "public" in connexion with "open spaces" is to be found in the Act itself, and therefore it is submitted that even if the words "the space about buildings" in section 59 (2) be construed by analogy to the London Building Acts, there are other sections in this Act to justify the inclusion of provisions in schemes to restrict land to the use of a public open space.

Open space.

Article XIV. of the Regulations [see section 56 and Appendix], which provides that local authorities shall, when they have decided to prepare a scheme in regard to an area in which they have been authorized to prepare a scheme, prepare maps indicating and distinguishing various things, enumerates among the things to be so indicated or distinguished : "Land proposed to be allocated for use as open spaces (*a*) private or (*b*) public," "Land to be used for any other purposes, including, e.g., buildings for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise, indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land," "land to be acquired by the local authority for any purpose," etc.

Of course where the land included in the area is partly developed, and there are in existence contracts for the erection of various buildings or other works which cannot be touched by any scheme, these no doubt would have to be indicated on the map, whether the authority had any control over them or not for the purposes of the scheme. Regarding the article in this light, it is no doubt unobjectionable. If, however, it is framed in pursuance of the idea that the local authority can restrict any particular part of the land to any particular purpose, or type of building, it becomes a question how far the various sections of Part II. of the Act allow of such restrictions. It is submitted that

SECTION 54. section 59 (2) does contemplate something more than a mere set of provisions directed to securing a greater measure of hygienic conditions in building operations by such means as reducing the number of houses per acre, and the space about houses (as distinct from "open spaces") ; for mention is again made of the consideration of "amenity," and it may even be that the words "the space about buildings" include "open spaces," and that the words "limit the number of buildings," and "the space about buildings" leave room for inferring that the Legislature contemplated the restriction of part of the land to the purpose of providing wide main arteries.

Articles VI. and VII. of the Regulations Appendix, relative to additional particulars to be shown on Map No. 2 [see notes to section 56 (1)], when application is made under subsection (2) of section 54 of this Act, also allude to such "special purposes" : "if the local authority contemplate that the scheme to be prepared shall provide for certain areas being used for the purpose of open spaces or for other special purposes those areas shall as far as possible be indicated on the said map" (Article VI.).

But it is conceived that the cumulative effect of this subsection [59 (2)] and sections 54 and 55 is hardly greater, for this particular purpose than the two latter sections taken alone. In fact, so wide are the words used in sections 54 and 55, and so comprehensive the notion of "amenity," that any attempt to help out those sections or the meaning of that word, by reference to any other section might have the effect of introducing a limitation of meaning which might not otherwise have been suggested.

"WITH . . . CONDITIONS."

These words connote the requirements of light, air, and adequate ventilation and so forth, to be found so often mentioned in Parts I. and II. of the principal Act. Of course the Legislature cannot consider schemes that aim at model villages and aesthetic surroundings, while at the same time effecting a dangerous economy in regard to sewage arrangements. The object of these words is to secure that the evils that at present exist, and that can only be met either by drastic action under Part II. of the principal Act, or by large or small improvement schemes under Part I., shall not recur.

"AMENITY."

There is no attempt made in this part of the Act to define this word, unless we can so regard subsection (2) of section 59 : "Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for that purpose." The objections to regarding this section as a definition of "amenity" are that it does not purport to be one, that it relates primarily to the exclusion of compensation in certain cases, and that the words used are consistent with the inference that not all the means of securing "amenity" in the scheme are exhausted. The words, however, are certainly very wide, if vague, but the Board by their regulations (section 56 and Appendix) seem also to consider that they are not exhaustive. Article XII. (*c*) of the Regulations runs : "Any person interested or affected desiring to be heard in reference to such proposal, including any persons representing architectural or archæological societies *or otherwise interested in the amenity* of the proposed scheme . . ." The article therefore adds architectural

and archæological considerations. Of course the Regulations have no statutory force and can only be justified if they are authorized by the language of the Act, and in this case they are copied from paragraph (*c*) of section 2 of Schedule V.

The Board, as pointed out previously in the notes to this subsection, allude to the practicability of including in a scheme provisions restricting the use of certain areas of land to specified purposes. This, as pointed out above, evidently points to open spaces, and indeed almost all the desiderata of town planners. At all events, the words of this part of this Act seem comprehensive enough to justify a reference in this note to "garden cities" and other efforts of housing reformers, although of course it is not to be assumed that the idea of "amenity" thus deducible is necessarily the legal notion of the word.

"Garden cities" are a familiar instance of schemes that make a very praiseworthy, and apparently economically sound experiment in the way of imparting to town extensions or model villages something of the aesthetic. (Amenity presumably connotes something of this kind; the word is defined in Murray as indicating that which is "pleasant and agreeable.") Housing reformers have for years agitated against the monotony and ugliness (to say nothing more) of our average bye-law roads and the houses in them. Speaking of Letchworth, Mr. Thompson, Chairman of the National Housing Reform Council, in his work *Housing Up-to-Date* says, sub nom. "Architectural Features": "The dwellings so far erected consist to such a great extent "of cottages and small villa residences, that it is unreasonable to "expect any imposing architectural effects at this stage of the city's "growth. An effort has been made, however, to give an air of bright-"ness, colour, lightness, warmth and variety to these small dwellings by "the free use of red tiles, expansive steep-pitched roofs and gables, "dormer windows, rough cast and white-washed walls, and green "painted woodwork, casement windows, grouping of dwellings and "other features foreign to the construction of those solid stodgy rows "of small villas with stone-framed bay windows, smoky red or dirty "yellow walls projecting in ugly bars through monotonous areas of "gloomy coloured slate roofs, so dear to the heart of the practical man "who has been building our suburbs so substantially—and hideously—"for years."

Garden Cities.

Mr. Nettlefold in *Practical Housing*, speaking of Harborne Tenants, Limited, says: "Several experienced people took for granted "that the pool on the left of Ravenshurst Road would be filled in by "tipping, so as to make room for more houses. We thought it better "from every point of view to preserve this beauty spot as part of a "park leading up to our central feature—the institute and shops." These instances indicate what it is that may be contemplated by the use of the word "amenity" in the above subsection, and others, such as the preservation as far as possible of trees or of ancient monuments, will occur to the mind.

Note to Subsection (2).

"LOCAL AUTHORITY." See section 65 (1).

See regulations issued by the Local Government Board in Appendix, as to the procedure before, and for the purpose of an application for authority to prepare or adopt a scheme, and as to procedure on and after the preparation or adoption of a scheme.

In their memoranda to the councils of rural districts, and of boroughs and other urban districts (Part II. of this Act does not directly concern metropolitan boroughs), the Board point out that this stage of the pro-

Section 54.

cedure is of importance, because, unless some other time is fixed by the Board for the purpose, the time at which application for the authorization to prepare a scheme was made will be the point of time after which a person who erects buildings on land included in the scheme will not be entitled to compensation in respect of such subsequent operations [section 58 (2)].

Schemes prepared by Local Authority and Schemes adopted.

It will be noticed that at the outset, this part of the Act distinguishes between schemes prepared by the local authority and those prepared by other persons and merely adopted by the local authority. There ought of course to be no difference in point of substance. It should, ideally, be immaterial by whom the scheme is initiated or prepared, if the object of the Act be the realization of the best possible sanitary conditions concurrently with amenity and convenience.

"Adopt" is taken in conjunction with "owners of land" and always implies, both in the Act and in the Regulations (Appendix), a scheme prepared by "landowners." Whether the word "owners" is to be pressed or not is rather difficult to say. Presumably the proper definition is that of section 49 (2) of Part I. of this Act. The Act nowhere expresses or implies any recognition of the existence of such institutions as garden cities or any other English reformed housing communities that will suggest themselves to the mind. It would clearly be impracticable as well as unnecessary for a local authority to step in and insist on preparing a scheme in such a case as, e.g., that of Port Sunlight, where a wealthy owner is doing all that is required not only by the housing acts but by the dictates of conscience; he requires no other supervision than that which is required by the exigencies of such statutes and building byelaws as ought not to be suspended or modified. But there can be hardly any doubt any society following in the footsteps of Hampstead Tenants, Limited, Coryndon, Harborne Tenants, Ltd., Earswick, or Port Sunlight would be certain to be "owners" within the meaning of any legal definition of that word. Conceivably, however, if a society borrowed in order to initiate its model village or garden suburb and then mortgaged the site to secure the loan it could hardly be called an "owner." Of course the meaning of the section, apart from this consideration, is clear: it means that where the responsible authority or the Local Government Board (acting under section 61) come to the conclusion that a scheme ought to be made as to a particular district, that scheme will, in the event of the various landowners concerned proving hostile either to the scheme, to one another, or to both, be carried out by the responsible authority. If this be the meaning, then, that would seem to imply that wherever possible the Act contemplates the desirability of the owners themselves preparing the scheme and not the local authority.

"Scheme proposed by . . . Owners."

There is but little doubt that more could be effected by this alternative than by the local authority initiating the scheme. It would clearly be for the benefit of owners and authorities alike for this course to be adopted as often as possible. Compulsory powers necessarily mean greater expense. There seems no reason why landowners should abstain from co-operating in carrying out town planning schemes, there being not only provision for compensation where their property is injuriously affected by the scheme, but for economy in the execution of schemes by reason of the power the Board have to suspend, by regulations, local byelaws as to construction of buildings, roads, etc.

The distinction in procedure between adopted schemes, and those prepared by the local authority will be found dealt with in the Regula-

tions (see Appendix) made in pursuance of their powers under section 56 of this Act by the Board. See especially Article V. (*e*), advising that if an application relates to the adoption of a scheme proposed by owners, a copy of the scheme so proposed and a statement of any modifications which the local authority are of opinion should be made, should also accompany the application to the Board. See also Articles VII., IX., and XV. as to additional particulars to be shown on maps, additional information to be furnished to the Board and the printing of schemes together with memoranda of any modifications proposed, and maps showing details of proposals.

In a circular dated May 3, 1910, which was addressed to the various local authorities, the Board point out to the authorities the importance of bearing in mind, before applying for authority to prepare or adopt a scheme, but especially in the case of adopted schemes, the provisions of this Act in regard to compensation, and responsibility for enforcing the observance of schemes and for executing works incidental or relating to schemes. The circular runs: "In a case in which the owners of land propose a scheme for the adoption of the local authority, the Board consider it very desirable that the local authority should, before applying to the Board for authority to adopt the scheme, obtain from the owners definite information or undertakings on the question of any compensation which might become payable in respect of property injuriously affected by the scheme in the event of its becoming operative, whether in respect of property of the owners proposing the scheme, or of the property of any other person. Under section 58 (1) of the Act any compensation payable in accordance with the provisions of that section and section 59 would be payable by "the responsible authority" referred to in section 55 (2), that is to say, the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under the scheme or Part II. of the Act are to be executed by a local authority. In regard also to a scheme proposed to be prepared by a local authority, it appears to be a matter of the greatest importance that these provisions as to compensation should be carefully borne in mind from the earliest stage of the proceedings, and that, as in the case of the proposed adoption of a scheme, the local authority should endeavour to secure definite agreements with any person who may be affected by the proposals" [see as to compensation notes to section 55 (2) under "suspending . . . byelaws" (iii), to section 56 (2) (*a*) and to 58].

As to whether the local authority have power to refuse their approval of building plans in conformity with the local byelaws on the ground that they propose to apply or have in fact applied to the Board for authority to prepare or adopt a scheme which will include the plots in respect to which the plans have been delivered, see notes to section 55 (2) under "suspending . . . byelaws," note (ii).

Note to Subsection (3).

THE KIND OF LAND TO BE INCLUDED IN A SCHEME.

[See also subsection (7) and section 57 (1) *a*.]

Town planning schemes are concerned with land "in course of development" or "likely to be used for building purposes, and by the above subsection may also include land "not likely to be used for building purposes, and land already built upon." This seems to be a fairly exhaustive enumeration, however unscientific it may be. It is difficult to say whether the Act used "in course of development" as alternative or synonymous with "likely to be used for building purposes." If not, what is the statutory meaning of "land in course of develop-

SECTION 54. ment" ? It is apparently something different from land already built upon, land likely to be built upon, land likely to be used for open spaces, roads, streets, etc. [subsection (7)] and land not likely to be built upon. Apart from the inherent difficulty of defining "land not likely to be built upon" it is doubtful whether the definition of "land likely to be used for building purposes" in subsection (7) does anything more than exclude agricultural land which is likely to remain agricultural land, unless it also excludes barren or waste belts of country far removed from towns, which is improbable from the very *raison d'être* of town planning schemes. If land "not likely to be used for building purposes" does, however, mean something different from agricultural land, it can only mean, for the purposes of this part of this Act, land that is popularly known as "undeveloped."

This phrase is usually taken to indicate land lying idle, not necessarily for want of a purchaser, but because the owner does not think he is likely to get a very high price for it, or because he thinks if he waits for a certain number of years, the development of adjacent land or the advent of a railway or canal will enhance the market value of his own land. But all land, apart from purely agricultural land, is likely to be used for building purposes within the meaning of subsection (7) if it lie in the vicinity of a developing town. If not, what is the test to differentiate it ? It may be suggested that "land not likely, etc.," means land not in the market for sale, and therefore indicates something that is dependent upon the intentions of the individual owner. The great advantage, however, of the above subsection [3] apart from the difficulties of definition, is that no scheme will be liable to be frustrated owing to the presence of land in regard to which no one can say accurately what the owner's intentions may be.

But even assuming the existence of a scientific difference between land "likely to be used" and land "not likely to be used" for building purposes, we are still no nearer the meaning of the phrase "in course of development." Popularly the phrase indicates any land which is being converted from its virgin state. The Finance (1909–10) Act, 1910, in that part of it which relates to the taxation of land values, uses the phrase "undeveloped land" as meaning land that has not been developed by the erection of dwelling-houses, or by the erection of buildings for the purposes of any business, trade or industry other than agriculture ; and land is regarded as "developed" within the meaning of that Act, if it be used bona fide for a business, trade or industry other than agriculture [10 Edw. 7, c. 8, s. 16, and see also section 41 defining agricultural land]. The Finance Act appears to use the word "developed" with close reference to "buildings." But land is developed if it have a canal or railway running through it with no buildings of any kind on the borders for miles. For these reasons, and for the reason that subsection (7) purports to define only "land likely to be used," etc., and not "land in course of development," it seems right to regard land "in course of development" as meaning something different from "land likely to be used for building purposes" and "land already built upon."

In their Regulations the Board in Article VIII. loosely refer to all four expressions, viz., "in course of development," "already built upon," "not likely to be used, etc.," and "likely to be used, etc." Article VIII. requires the local authority, when making application to prepare or adopt a scheme to furnish a statement giving—

> "(*a*) A general description of the scheme, including information as to the general character of the land proposed to be included in the scheme, the extent to which the scheme applies to land in course of development, the extent to which it applies to

land likely to be used for building purposes, and, as regards the last mentioned land, the grounds for considering that the land is likely to be so used."

" (*c*) If the scheme includes land already built upon or land not likely to be used for building purposes, the reasons which in the opinion of the local authority render it necessary or desirable to include such lands in the scheme; particulars of the buildings on the lands; such information as the local authority may be in a position to give in regard to the extent to which it would be necessary to provide for the demolition or alteration of the buildings for the purpose of carrying the scheme into effect, and as regards any land not likely to be used for building purposes, the grounds on which it is considered that such land would not be so used."

Local authorities are therefore invited to answer these questions as best they can. Again, Article XIV. of the Regulations, which relates to the preparation of draft schemes and maps showing the details of the proposals enumerates in a list what must be " indicated and distinguished " on the maps. Among other things are to be found—

(*a*) Land already built upon.
(*b*) Land not likely to be used for building purposes.
(*c*) Land proposed to be allocated for use as open spaces : (*a*) private, or (*b*) public.
(*d*) Land to be used for any other purposes including, e.g., buildings " for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise, indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land."

The land included under the subheading which is for convenience called (*d*) purports to get rid of the difficulties caused by subsections (1), (3), (7) of section 54 of the Act by the very comprehensive words " for any other purposes," and therefore (*d*) is intended to include " land likely to be used for building purposes " and " land in course of development " without in any way specifying what " in course of development " means. This enumeration, though the words " for any other purposes " [i.e., than those already enumerated in the rest of the Article] are not to be found in the statute, seems quite justifiable, for it is difficult to imagine what land can possibly be excluded from the operation of section 54; inasmuch as land must be either (*a*) not likely to be built upon, (*b*) likely to be built upon and, though less logically, (*c*) already built upon. The difficulty is, as before indicated, to ascertain upon what principle to differentiate between land likely and land not likely to be used for building purposes, and what meaning to give to " in course of development," for it is to the first and last of these kinds of land that town planning schemes are primarily directed.

What is to happen as regards land likely to be developed, but not actually developed nor in course of being developed ? Either it is likely to have buildings on it or it is not. If not, it may be destined to be occupied by a railroad or canal, when presumably it comes within the expression " not likely to be used for building purposes," and would not be very likely to be included in a scheme under subsection (3).

No doubt land coming within paragraph (*b*) of section 16 of the Finance Act, 1910, would be regarded as land in course of development : " Where the owner of any land included in any scheme of land development shows that he or his predecessors in title have,

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with a view to the land being developed or used as aforesaid [i.e., business, trade or industry other than agriculture] incurred expenditure on roads (including paving, curbing, metalling, and other works in connexion with roads) or sewers, that land shall, . . . be treated as land so developed or used, although it is not for the time being actually so developed or used . . . " (section 16 *b*). In other words the land is treated as constructively developed, and would, for the purposes of the Housing, Town Planning Act, 1909, come either under subsection (1) or subsection (7) of section 54.

In any event the Board are constituted final arbiters on this difficult question, whether land be likely to be used for building purposes or not [subsection (7) infra]. See also notes to section 58.

Note to Subsection (4).

APPROVAL BY THE BOARD (PROCEDURE).

It will be remarked that the Act places in the central body the fullest powers of control in the matter of town planning schemes. There is, however, no intended restriction on the initiatory action of local authorities, the control of the central authority existing rather to secure uniformity of action and the execution of schemes on general broad principles.

The procedure relative to obtaining the approval of the Board will be found in the Regulations (see Appendix), Articles XIX. to XXIV.

The application to the Board to approve a scheme is to be made by resolution. It will be noticed that Article XIX. requires information to be given to the Board as to the way in which the voting on the resolution went, but apparently not the names of the members voting or absenting themselves. When transmitting a copy of the resolution to the Board, the local authority has to transmit certain documents and maps. In particular there must be statutory declarations by the clerk or some other competent person to prove that when the Board gave authority to the local authority to prepare or adopt a scheme, notice of that authority was served upon the owners, lessees and occupiers of the land comprised in the scheme ; also, to prove that notice was served on the council of any borough or of any urban or rural district within which part of the land comprised in the scheme is situated ; and also, where a main road is or may be affected by the scheme, that a similar notice was served upon the county council. There must also be exhibits and declarations to prove that notice to the same effect was given by advertisement in some local newspaper or newspapers. The clerk is also to satisfy the Board that, at least one month before deciding upon the scheme to be submitted to the Board for its approval, the local authority served upon the owners, lessees, occupiers, adjoining councils and county council (affected by the scheme in the way mentioned above in this note), notices that a draft scheme had been prepared or was intended to be adopted (as the case might be) and that it was proposed to submit the same, with or without modifications, to the Board for approval. He must further satisfy the Board that the local authority duly deposited a draft scheme and all necessary maps at a place convenient for inspection, and that the various notices stated that the local authority were prepared to consider all objections or representations made in writing during the period fixed for inspection (see also Articles XII. and XVI.).

There must also be a sealed copy and three other copies of the order of the local authority containing the scheme made or adopted, together with a certified copy of every map referred to in the order and a copy of all written objections so far as the same have not been withdrawn or removed in the scheme as finally prepared or adopted. Article

XXI. requires information similar to that furnished in Articles VIII. and IX., provided that if the information previously furnished under those articles was full and accurate, there is no need to do more than refer to the information when applying for the Board's approval to the scheme. Article VIII. requires particulars as to the general character of the land proposed to be included, the reasons which the local authority rely upon to support their application for authority to prepare a scheme, the reasons for including land already built upon or land not likely to be built upon, information as to arrangements to be made in regard to sewerage, water supply and lighting and information as to any monuments or ancient monuments. Article IX. refers to the additional information to be furnished to the Board where the local authority are adopting a landowners' scheme. The local authority are required to give names and addresses of owners, lessees and occupiers of the lands included, and the approximate extent of each parcel of land; further, information showing how the scheme involves the suspension of any existing statutes, byelaws or regulations in operation in the area included in the scheme, the extent to which it may be necessary for the local authority to acquire the land included, information as to whether any owner will claim compensation and the estimated increase in value of any property [see section 58 (3)].

Article XXI. (*b*) requires the local authority to give certain particulars in so far as they are not contained in the scheme. Most of the particulars required under this part of Article XXI. will, however, have been given under Articles VIII., IX., XIV. As to the rest, the scheme would doubtless almost necessarily contain particulars of any works to be executed under the scheme by any person or local authority, particulars of any land forming part of any common, open space, or allotment situate within the included area and particulars of any land included in the scheme which is situate within the prescribed distance (see note to section 74) of any royal palace or park (Article XXI. *b* vi, ix, x).

Article XXII. requires the local authority to furnish information to the Board as to the estimated cost of carrying out the scheme, so far as the cost is to be borne by (1) the local authority applying for approval and (2) any other local authority. The heads under which these estimates are to be given are set out in the article. Paragraph (*c*) of Article XXII. requires the local authority to supply a list of all local Acts, provisional orders, byelaws, or regulations in force in the area of any local authority any part of whose district is included in the scheme.

Article XXIII. requires the local authority to advertise in some local paper the fact that it has submitted a scheme to the Board for approval, and that any one affected may inspect a copy of the scheme at a place specified (in the notice).

"THE BOARD MAY REFUSE TO APPROVE ANY SCHEME EXCEPT WITH SUCH MODIFICATIONS AND SUBJECT TO SUCH CONDITIONS AS THEY THINK FIT TO IMPOSE."

Where the Board transmit to the local authority a draft order for approving the scheme with modifications and conditions, the local authority must within fourteen days after receiving the draft order, serve copies of the order on the owners, lessees and occupiers, adjoining councils, etc. (where affected as noticed in the preceding part of the notes on this subsection), together with a notice that any objections or representations in regard to such modifications and conditions can be made in writing and sent to the Board within a month from the

SECTION 54. date of the serving of such draft order and notice [Regulations, Article XXIV. (*a*)].

Further, the local authority must within fourteen days after receiving the draft order advertise in some local paper that the Board have prepared such order, that a copy of it may be inspected and information pertaining thereunto may be obtained free of charge, and that any objections and representations may be made within a month from the date of the notice [Article XXIV. (*b*)].

If the local authority themselves desire to make any objections or representations in regard to the modifications and conditions proposed by the Board, they must furnish the Board with the same within one month of receiving the draft order [Article XXIV. (*c*)].

"PROVIDED, etc." See Articles XXV. and XXVI. of the Regulations.

Article XXV. says that when the local authority are notified of the Board's intention to approve a scheme (with or without modifications) and have received a draft order for approving the scheme, they shall fourteen days after receiving the notifications advertise in some local newspaper, (*a*) that the Board intend to approve the scheme, and (*b*) that the Board propose to publish a notice of their intention in the *London* (or *Edinburgh Gazette*), and (*c*) that any one interested may object in the manner prescribed by Article XXVI. within twenty-one days from the publication of the Board's intentions in the *Gazette*.

Whether the draft order under Article XXV. is the same as that alluded to in Article XXIV. is doubtful. If it be so it seems superfluous to say in paragraph (*c*) of Article XXV. after draft order, where those words first occur, "forwarded to them under this article," and to make still further provision for its inspection. The difficulty is that under section (*b*) of Article XXIV. there is a period of one month for inspection from the date of the advertisement, but under section (*c*) of Article XXV. only twenty-one days from the publication in the *London Gazette*. Apparently the difference is this: under Article XXIV. the procedure does not seem to contemplate the time when the Board have actually decided to approve a scheme, but merely implies that the Board will approve subject to modifications. Under Article XXV. if there have been modifications these have been settled and the Board is evidently contemplated to have finally decided to approve the scheme. If this be so, there is a full period of seven weeks from the receipt and publication of the first draft order in which persons may make their objections, and an additional thirty days in which an address may be presented to the King.

"OBJECTS IN THE PRESCRIBED MANNER," i.e., prescribed by regulations made in pursuance of section 56.

The objection is to be made to and be brought before the Board by means of a letter, or other representation in writing, which letter or representation is then to be addressed, posted, or otherwise given, sent or delivered to the Board at their office. The letter or representation must indicate clearly the scheme to which the objection is taken, and must state fully in what respects the person or authority objecting claims or claim to be interested in the scheme, and the grounds on which the objection is made [Article XXVI.]

As to whether the local authority have power to refuse their approval of building plans in conformity with the local byelaws on the ground that they have applied for authority to prepare or adopt a scheme which will include the plots in respect to which the plans have been delivered, see notes to section 55 (2) under "suspending . . . byelaws," note (ii).

The expression "person or authority interested" in the above proviso is not limited to persons or authorities in the area which it

is proposed to bring under the operation of a town planning scheme, and will include persons and authorities in any adjacent area if they are affected by the proposed scheme.

Note to Subsection (5).

This means that, apart from the indirect or negative procedure indicated in subsection (4) (supra), the approval of the Board is as final as an Act of Parliament. This is in accordance with the general policy of this Act, which concentrates remarkably wide powers upon the Local Government Board. Cf. section 24 supra, abolishing the need of confirmation by Act of Parliament as regards improvement and reconstruction schemes.

On receipt of a copy of the Order of the Board approving the scheme, the local authority have four duties to perform:

(i) To publish, without delay, by advertisement in some local newspaper, notice of the Board's approval.

This notice must state—

(*a*) Whether the approval was with or without modifications;

(*b*) That the Board's order giving the approval, and a copy of any map or plan referred to in the scheme, may be inspected and any necessary information or explanation regarding the scheme can be obtained during three months after the date of the order at a place (to be specified in the notice), without payment of any fee.

(ii) To serve, not earlier than the second day after the first publication of the notice referred to in (i), upon the owners, lessees, occupiers of the land included in the scheme, and upon other councils within whose districts any part of the said land is comprised, and upon the county council where a main road is affected, a copy of the order, and a notice similar in purport to that mentioned in (*b*) above, as to inspection and information.

(iii) To make suitable provision for affording any person inspecting the order, or scheme, or any map or plan any necessary explanation or information in regard thereto.

(iv) Within fourteen days after the receipt of the order, to transmit to the Board statutory declarations of the clerk and exhibits to prove that they have complied with the requirements of (i) and (ii). [Article XXVII., Regulations, Appendix.]

Note to Subsection (6).

VARIATION OR REVOCATION OF SCHEMES.

According to the best authorities on town planning, it is neither essential to the underlying idea of town planning, nor advisable from a practical standpoint, to make fixed and unalterable plans of the land which they propose to include in their town planning schemes. The experience of German town planners goes to show that the carrying out of inflexible plans has led not only to burdening the rates with greater expense than was necessary, but to the fact that as the industries and institutions of the town did not develop in quite the same manner as was expected, the pre-arranged disposition of streets and junctions left very much to be desired from the standpoint of convenience. Some authorities seem to think that the general skeleton of a scheme must always be adhered to, and that alterations should be allowed only in some matter of detail, as for

SECTION 55. example, the curve of a main thoroughfare or the direction of an open space. But the above subsection in no way defines the kind or limits the degree of variation permissible, and it is obvious that everything depends upon circumstances, including though not necessarily primarily, that of expense. An example, not altogether hypothetical, will serve to show, however, how an apparently small deviation from the original scheme may involve a considerable burden on the ratepayers. A owns a strip of land which, according to the original scheme and maps, is destined to be part of a main thoroughfare, and therefore to be valuable front land. The authorities then decide that it would be better if the main thoroughfare were deflected by a few yards so as to curve still nearer some main public institution. A's land then becomes back land. But suppose B has in the meanwhile purchased from A on the assumption that the land was going to be frontage land, the ratepayers may have to compensate B in a heavy sum of money.

"RESPONSIBLE AUTHORITY." See section 55 (2) infra.

Note to Subsection (7).

"LAND LIKELY, etc." see notes to subsections (1) and (3).

"PURPOSE OF EXECUTING . . . TOWN PLANNING SCHEME."

If these words be read together with subsection (1), they amount to this: that a town planning scheme may be made with respect to land likely to be used for the purpose of executing work incidental to a town planning scheme; and if the words "a town planning scheme" in the above subsection refer to a concrete case, and not to schemes in general, the subsection presupposes the existence of a plan before determining on the land likely to be embraced on it. With this interpretation, the words would more logically refer to adopted schemes. On the other hand, if the words refer to schemes in general, then, referring to section 55 and Schedule IV., there can hardly be said to be any work which may not in one way or another be incidental to a scheme, with the exception, as regards schemes other than adopted schemes, of work in the nature of mining operations, and railroad and canal construction.

If, however, it is intended to execute works of these latter classes on any land, there can be but little doubt that the land would be regarded either as constructively developed or "in the course of development" within the meaning of subsection (1) supra: and if not, then possibly it might be regarded as land "not likely to be built upon." In one way or another, these loosely drawn sections appear to embrace every conceivable kind of land, though of course a stronger case has to be made out for land coming under subsection (3) than land that can be said properly to come under the other subsections.

Contents of town planning schemes.

55.—(1) The Local Government Board may prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the Fourth Schedule to this Act, and the general provisions, or set of general provisions appropriate to the area for which a town planning scheme is made, shall take effect as part of every scheme, except so far as provision is made by the scheme as approved by the Board for the variation or exclusion of any of those provisions.

(2) Special provisions shall in addition be inserted in every town planning scheme defining in such manner as may be prescribed by regulations under this Part of this Act the area to which the scheme is to apply, and the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority (in this Part of this Act referred to as the responsible authority), and providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions, and for suspending, so far as necessary for the proper carrying out of the scheme, any statutory enactments, byelaws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme:

Provided that, where the scheme contains provisions suspending any enactment contained in a public general Act, the scheme shall not come into force unless a draft thereof has been laid before each House of Parliament for a period of not less than forty days during the session of Parliament, and, if either of those Houses before the expiration of those forty days presents an Address to His Majesty against the proposed suspension no further proceedings shall be taken on the draft, without prejudice to the making of any new scheme.

(3) Where land included in a town planning scheme is in the area of more than one local authority, or is in the area of a local authority by whom the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority and for certain purposes another local authority, or a joint body constituted specially for the purpose by the scheme, and all necessary provisions may be made by the scheme for constituting the joint body and giving them the necessary powers and duties:

Provided that, except with the consent of the London County Council, no other local authority shall, as respects any land in the county of London, prepare or be responsible for enforcing the observance of a town planning scheme under this Part of this Act, or for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority.

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Note to Subsection (1).

LEGISLATIVE POWER OF THE BOARD.

This legislative power of the Board is not absolute. Section 64 infra enacts that all general provisions made under Part II. shall be laid as soon as may be before Parliament, and that the Rules Publication Act, 1893, shall apply to such provisions as if they were statutory rules within the meaning of section 1 of that Act. See also note to section 64.

Up to March, 1911, the Board had not issued either general provisions under this subsection, or special provisions under the succeeding subsection. It is difficult to see how such provisions can be made at a period which must be regarded as tentative in the history of schemes in this country. General provisions of the scope indicated in this section and Schedule IV. are, it is submitted, open to the objection that they are hardly necessary unless it is contemplated that towns shall henceforth be built or extended on more or less similar lines. It is true the section makes allowance for possible variations, as does subsection (6) of section 54, and that there may be "sets of general provisions adapted for areas of a special character," but, this notwithstanding, the natural inference to be drawn from this section, and from other sections, such as section 61, giving compulsory powers to the Board in cases of default, is that the Board make the scheme down even to its details, and the responsible authority assents to it. There is, therefore, but little left to the imagination or disinterestedness of the responsible authority. No doubt it is desirable to exercise a restraining influence upon the ultra-enthusiastic, who might possibly be disposed to direct their efforts to amenities to the utter exclusion of convenience or sanitation. Hence the desirability of provisions as to sewage, lighting and water supply. But even here, the general provisions in the various Public Health Acts, taken in conjunction with local byelaws, will effect all that can be desired. There is a further objection to this section in that it speaks of the " general objects " of town planning schemes without, except so far as may be gathered from section 54 (i), stating in what the Legislature conceives those objects to consist. This would be a matter eminently proper for the consideration of members of the responsible authority. The Act, however, is drawn in such a way that the hiatus in this particular section can be filled up by the vast comprehensiveness of Schedule IV. in such a way that though the Legislature has failed to state, except in the most general terms, what the general objects of schemes are, the Local Government Board may do so in a set or sets of general provisions.

"AREAS OF ANY SPECIAL CHARACTER."

It is difficult to give any very definite meaning to these words. The undeveloped land in the vicinity of towns may vary in different cases in regard to physical contour and natural advantages. But that can hardly necessitate the issue of a separate set of general provisions. Possibly, the words are referable rather to the proximity of the area to be included in the scheme than to the town in whose vicinity it lies. The economies to be effected in the way of transit or communication, make it clear that schemes can only affect areas in the neighbourhood of towns, even if subsection (1) of section 54 did not by necessary implication enact it. The general object of all town planners is, it may be boldly asserted, to secure healthful and agreeable homes and surroundings for the masses dwelling of necessity in the midst of, or very close to, industrial or manufacturing towns. If the physical aspect of the environments of manufacturing towns has nothing to do with the

words "areas of any special character," what has, except it be the greater or less proximity to the town? It is clear that the nearer the area included is to the town, the more valuable (generally speaking) becomes the land, and the greater will be the difficulty in overcoming the resistance of hostile landowners. Where the interests of the various landowners are of such a nature that the landowners can be compensated without any grave burden on the ratepayers, or where the landowners for the most part find it eminently to their advantage to devote their land to town planning purposes, provisions based upon one model may possibly serve. Where, however, a landowner's valuable frontage may become a back street, or a valuable site an open space, or a street which has hitherto been a convenient outlet for the traffic issuing from some particular industrial establishment is destined to be stopped up, it is clear a uniform set of general provisions would be of but little use.

"GENERAL OBJECTS OF TOWN PLANNING SCHEMES."

See preliminary note to this part of the Act, and subsection (1) of section 54. Subsection (1) of section 54, says the "general object" is to "secure proper sanitary conditions, amenity and convenience in connexion with the laying out and use of land, and of any neighbouring lands." This subsection of section 55, taken with Schedule IV., in no way amplifies subsection (1) of section 54. But it enumerates a list of matters for which the Board are empowered to provide, from which it may not be hazardous to submit here what the objects of a scheme are.

The matter of earliest importance is to encourage co-operation [Schedule IV., 18; section 56 (2) (*a*)] between the responsible authority, the landowners included in the scheme, and all others who may be interested, by means of conferences, in order to secure the harmonious assistance of all concerned in providing people, not only with adequate housing accommodation, but with the space, light and air so essential to health. More can be accomplished by co-operation than compulsion, either of the Board over the responsible authority, or of the latter over the owners of land. The next thing according to an eminent authority is "to ensure the exercise of foresight in reserving plenty of room where eventually main thoroughfares will be required" (Nettlefold, *Practical Housing*). And then, thirdly, to take into account "everything that helps to make life worth living, to consider the surroundings of a house as well as the house itself. Cheerful surroundings are quite as important as healthy homes" (Nettlefold). It is then necessary to consider, in detail, what are the constituent parts of a town or of such a town extension, as the circumstances of the case require, in order that these may be so disposed as to secure something approaching an ordered harmony. Of course herein a distinction is to be noticed that was remarked upon in the preliminary note to this section, namely that a town extension plan is not of necessity the same thing as a town improvement scheme; the former is, as it were, *res integra*, the latter is in the nature rather of necessary patchwork. The Act is, it is submitted, concerned with both, though more can be accomplished in the former case because there must of necessity be less hampering restrictions and conflicting interests to overcome. Schedule IV. does by necessary implication embrace all the component parts of a town, viz., streets and roads, buildings, structures and erections, open spaces; and sewerage, drainage, lighting, water supply, and works ancillary or consequential to all these.

It will not be out of place to consider here what the general objects of a scheme are in relation to some of these enumerated parts of a town.

SECTION 55. **Streets and Roads.**

The first thing is to provide for wide thoroughfares or main arteries leading from the centre of the town to the suburbs, with a gradation of narrower and less expensive roads and streets for places where it is contemplated that the traffic will not be so heavy. The roads for purely residential districts will of necessity be the narrowest and cheapest consistent with air and space. In this context it is useful to observe that the distance between the dwelling houses should not of necessity be less than customary in the healthy residential roads of to-day, but that that part of the road which is required for traffic may be considerably narrower, while grass plots may be left along the sides [see subsection (2) as to suspension of byelaws] as, e.g., at Earswick. It is not here contended that these things are enacted, but merely that they are the lines along which pioneers have gone. It is not of course essential to the objects of town planning schemes that the roadway of residential quarters should be less than that of the main arteries unless of course that be the only way to guard against heavy traffic, using a road in which dwellers expect to have quiet and restfulness. This last is one consideration, and would no doubt come under the general notion of "amenity" [see 54 (1)], but the paramount consideration is that of economy in road making, which according to the views of all experts, is one of the main obstacles in the way of practicable town planning. It is suggested by Mr. Nettlefold, in the work already alluded to, that even the main thoroughfares can be made more healthful still by planting trees, which from their property of absorbing noxious gases, are useful as well as pleasant. The example of Aldwych and the Kingsway will serve as a warning to all concerned of the tremendous price that has to be paid by way of compensation to owners with long matured vested interests and estates, for the privilege of having a broad main artery in the heart of London. If, therefore, adequate provision be made at the outset for the chief thoroughfares, responsible authorities will at least have the backbone of a town calculated to be adequate for most purposes. The framers of a scheme should be careful to consider the probable direction of main traffic, for the original plan cannot of itself be paramount to the accidents of chances. Industrial centres may spring up unexpectedly, and demand a new main thoroughfare along a road that might hitherto have been regarded as suitable only to the infrequent traffic that alone is to be tolerated by private residents. That is why town planners insist on an average full width between houses for all roads; for in the event of it being found necessary at a later date to convert an unmetalled side road with turf on the sides into a macadam main road, no large sums would have to be paid to owners of house property by way of compensation for demolition. Moreover, money would be saved in two ways by this exercise of forethought: for though a byelaw road would, as regards residential quarters, be narrower than the ideal town planning road, it is probable that it is more expensive to maintain a macadam surface, than a narrower surface of gravel together with the trees and grass plots which commend themselves to the town planners. Byelaws, moreover, if obstructive to the scheme, can be suspended [subsection (2)], a power which will be useful in connexion with that of stopping up or diversion of existing highways (Schedule IV.). Before this Act, when the alteration of a highway amounted to a diversion of it, the local authority had to obtain an order of quarter sessions under sections 84–91 of the Highway Act, 1835, before they were able to stop up any part of the existing highway.

The addition of the words " structures and erections " may possibly have been suggested by the somewhat narrow interpretation given to the word " building " in *Fielding* v. *Rhyl Improvement Commissioners*, L.R. 3 C.P. D. 272; 38 L.T. (ns) 223; 42 J.P. 311), where it was held that two brick structures, one intended for a brick kiln and the other for storing tools and for general convenience of workmen, were not " buildings " and so did not come within the bye-laws.

These words of the Schedule refer both to existing buildings and to buildings to be erected. Power is given to the responsible authority under section 57 to remove or alter any building in the area included in the scheme which is such as to contravene the scheme, or in the erection of which any provision of the scheme has not been complied with. The latter words of this section clearly point to buildings to be erected, apart altogether from the fact that a scheme could hardly be carried out at all unless the responsible authority had powers as to future buildings over and above such powers as may be conferred upon them by the local building byelaws.

There are two aspects in which the matter of future buildings may be viewed, (1) in relation to the average cost of estate development, (2) in relation to the nature, relative position, and construction of the buildings themselves. The reduction of the cost of estate development is admittedly necessary to ensure the harmonious working of this Act, and it is not unreasonable to suppose that this can be effected without in any way deteriorating the quality of streets and houses. The whole object of a scheme is to bear in mind the correlation of the parts of a town and not to build houses or streets without any particular reference to locality or purpose. A great saving can be effected in the residential roads by removing the need for channelling and curbing and for paving with concrete flagstones on mortar beds. There may also be a saving on the houses themselves, in that there is hardly the same necessity for brick backing to tile hung timber framing, or the same thickness of concrete covering of sites, in districts wholly rural or partly rural and partly urban, as is required by the model urban byelaws [see note to subsection (2), " suspending . . . byelaws "].

It is to be noted that section 59 (2) provides that " property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for that purpose."

As to the nature and relative position of the buildings of a town planning scheme, much now depends on local requirements, assuming that Schedule IV. and section 55 leave anything to local inspiration. Most continental schemes make very elaborate provision for the relative sites of warehouses, shops, manufactories, public buildings and private dwelling houses, separate districts being allocated for factories on that side of the town opposite to the quarter from which the prevailing winds blow, in order to cause the fumes and smoke to be dispersed as far as possible into the open country. Shops can hardly be prevented from springing up where circumstances may seem to require them, unless certain districts are to be favoured with a monopoly. Much, no doubt, depends on the degree to which local authorities will feel themselves compelled to prepare schemes on a model plan. No doubt the

SECTION 55. Board will hardly venture to do more than make suggestions in this direction. The general provisions alluded to in the above section and Schedule IV. are to be construed with reference to section 54 (1). Whether, however, the great comprehensiveness of the words " amenity and convenience " allow the Board to make detailed provisions in schemes as to the relative positions of particular kinds of buildings, is a question of interpretation which seems almost of necessity to be answerable in the affirmative. Expense is the great difficulty, for there can hardly be any doubt as to the wisdom of suggestions on this point, which have been thrown out for years by town planners. Municipal and public institutions, for example, should rightly be placed in the centre of the town, together with other high buildings. In residential quarters, buildings should be more widely scattered and lower in altitude. The normal position for shops is along the main arteries, for business offices, in the centre of the town upon dearer land, and for warehouses, in the factory district, and hospitals or sanatoria near parks or open spaces. As regards the aspect of dwelling houses, the chief living-rooms should as far as possible be put on the sunny side.

It is not of course pretended that the Act specifically enjoins these things ; but merely that as they are the average proposals of the bulk of town planners and housing reformers, it is likely that the Board in framing general provisions, would be guided by them.

" Open Spaces " (Schedule IV. 3).

These are of the very essence of hygienic town planning. It obviously entails expense in estate development to make provision for open spaces and " lungs " instead of making the density of houses per acre as high as the byelaws allow. But as shown above, and in the note to subsection (2) a saving can be effected in various ways. It is clear, however, that trifling expense cannot be allowed to stand in the way of provisions for rest and recreation. Parks, small and large open spaces, recreation and play grounds, should all be provided for in the plans and shown on Map 4. [See Regulations, Appendix.] Of course frontage land should not be used unless no other alternative is presented. Back land is usually cheaper, and moreover is the natural position for open spaces from the sanitary point of view.

That these things can be effected without the necessity for compulsion is shown by the example of the Hampstead Garden Suburb, where private generosity and municipal action combined to add some 80 acres of the company's 320 to Hampstead Heath as a permanent open space. No doubt the building sites preserved around this open space will provide dwelling accommodation for the more well-to-do only, but the principle can nevertheless be followed in varying degrees for the benefit of the poorer.

(As to variation of byelaws prescribing depth of open spaces, see note to next subsection.)

" The preservation of objects of historical interest or natural beauty " (Schedule IV., 4).

Little comment is necessary here. It is submitted that the expression " natural beauty " should be liberally interpreted to secure the preservation of trees to as great an extent as possible.

" Extinction or variation of private rights of way and other easements."

Cf. note to section 27 supra. The principles as to compensation there alluded to would no doubt apply to this part of this Act.

"Dealing with or disposal of land acquired by the responsible authority or by a local authority" (Schedule IV., 10).

Cf. analogous powers under section 40 of Part I. of this Act.

"Power of entry and inspection" (Schedule IV., 11).

Cf. analogous powers of entry under sections 15 (2), 16 (2), 36, 68 (4), and powers of inspection under sections 11 and 17 of other parts of this Act. These powers are essential to the efficient working of any policy of housing reform or town planning, and for surmounting the conflict between landlords and tenants. If may be noticed here that the Elberfeld system is being tried in England, whereby, among other things, women are appointed either by remuneration or voluntarily to inspect houses, supervise and collect rents, select tenants and order the necessary repairs.

"Power of the responsible authority or a local authority to accept any money or property for the furtherance of the object of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888" (Schedule IV., 14).

The Mortmain Acts have been variously modified to suit the exigences of charity. Cf. section 8 of Part I. of this Act and see note thereto. Presumably the Board will have power to make provisions dispensing with the assistance of the Charity Commissioners altogether as to administration.

Administration had, however, previously been simplified by the Mortmain and Charitable Uses Act, 1891, which, *inter alia*, effected the removal of the necessity for inserting in a will, making charitable devises or bequests, any direction for the marshalling of assets.

"Application with the necessary modifications and adaptations of statutory enactments" (Schedule IV., 15).

There is a provision in subsection (2) of this section for suspending so far as necessary, any statutory enactments. The schedule appears to give the Board the converse power in addition.

The Rules Publication Act, 1893, section 1 and the proviso to subsection (2) of this section provide for the same period of forty days. But it is clear that a scheme might well contain special provisions, not expressly suspending a statutory enactment, but by implication applying a statute with modifications and adaptations, when there would be no provision either under section 64 or the proviso to subsection (2) of section 55 for laying the modifications before Parliament. The only way to object would be under the proviso to subsection (4) of section 54.

"Carrying out and supplementing the provisions of this Act for enforcing schemes" (Schedule IV., 16).

These provisions are contained in section 57 infra.

"Co-operation of the responsible authority with the owners of land included in the scheme or other persons interested by means of conferences" (Schedule IV., 18.)

See section 56 (2) and notes thereto, and the preliminary note to Part II. The Board have already issued procedure regulations for securing co-operation. See Regulations in Appendix, Article III.

SECTION 55. "Charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase and for that purpose applying, with necessary adaptations, the provisions of any enactments dealing with charges for improvements of land" (Schedule IV., 19).

See subsection (3) of section 58.

The object of a town planning scheme is to benefit the community as a whole, and therefore unearned increment should rightfully go to the reduction of the expense of estate development. Enactments dealing with charges for improvements are, e.g., section 150 of the Public Health Act, 1875, by which the local authority may after due notice carry out improvements and charge the cost to the "owners or occupiers of premises fronting, adjoining or abutting"; section 213 of the same Act, by which the local authority may levy a private improvement rate on the occupier in respect of any expenses incurred by them, with 5 per cent. per annum interest, and may extend the payment over a period not exceeding thirty years; section 240, by which they may grant a rentcharge on the property to a person who had advanced the amount of the expenses. No doubt allowance would be made for such sums, when putting into force section 58 subsection (3) of this Act, in the same way as under section 36 of the Finance Act, 1910.

Note to Subsection (2).

"SPECIAL PROVISIONS . . . DEFINING IN SUCH MANNER AS MAY BE PRESCRIBED BY REGULATIONS."

Regulations under this subsection had not up to March, 1911, been issued by the Board unless those issued under section 56 are intended to be in pursuance of this section too (see notes to section 56 and Procedure Regulations in Appendix).

The general provisions (when issued) would establish a kind of skeleton scheme the details of which are to be filled in by special provisions framed according to regulations. Taken with the procedure regulations, referred to in the succeeding section, this section makes an extraordinarily complicated network of rules for the guidance of local authorities, and, as pointed out in the preceding subsection of this section, appears to leave but little to the initiative of the local authority. This complication is diminished to a certain extent if we may regard the regulations issued in pursuance of section 56 as tantamount to those to be prescribed by this subsection. They are tantamount to this extent: (i) as regards the area proposed to be included in the scheme; Article I. (*b*) provides for the deposit of a map of the land proposed to be included, while (*c*) provides for notices describing the said land; under Article XIV., which contemplates a time when the local authority have fully considered and developed their proposals, and have decided to prepare a scheme in regard to an area in respect of which they have been authorized to prepare a scheme, a draft scheme must be prepared embodying their proposals and maps on a particular scale showing the area and also all such particulars and details as can conveniently be indicated thereon. (ii) As regards the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works to be executed by a local authority: this necessarily appears under Articles I. and XXI. and from the contradistinction between the authority so applying and "councils interested," referred to in Article II. *et passim.* (iii) As regards matters which may be dealt with by general provisions, i.e., as regards all matters mentioned in Schedule IV.: Articles XIV. and

XXI. deal exhaustively with them, and with such other matters as the suspension of byelaws. In all probability the regulations referred to in section 56 are intended to cover the same ground as those referred to in the above subsection. Whether the Act does or does not contemplate two sets of regulations, it is almost unnecessary to say that they cannot conflict with those issued under section 56, and in this context no distinction has been drawn by the Board between substantive and procedure regulations, a distinction which from the drafting of sections 55 and 56 seems impracticable. In any event the local authority are spared the trouble of supplying the same information twice over, once in pursuance of this subsection and again under section 56.

If the Board issue general provisions it will be matter for curiosity to see how they will differ from the Regulations issued under section 56 or (apparently) under subsection (2) of this section by way of special provisions. If they do not, then the procedure regulations will have, in practice, the force of a statutory enactment (see section 64), a result which possibly was not contemplated by the Legislature.

"Excluding or varying the general provisions."

See section 54 (6), and as to procedure see Regulations, Article XVI., relating to objections or representations as to draft schemes, Article XXIV. as to modifications proposed by the Board, and Article XXVI. prescribing the manner of objection to approval of scheme by the Board. It is to be noted also that Article XXXIV. makes provision for departures from the Regulations themselves, in so far as such departures are not inconsistent with the requirements of the Act.

"Suspending . . . byelaws."

(See also preliminary note to Part II. of this Act, and notes to subsection (1) of this section as to the "general objects" of town planning schemes.)

Probably the byelaws that could, with a view to economy, be most advantageously suspended are those relating to street construction. Where only a certain number of houses per acre may be erected (Schedule V., 5) and open spaces, parks and recreation grounds are interspersed, there may be no harm in permitting the construction of cheaper roads, for the provision of main thoroughfares strong and wide enough to admit of the laying of tram-lines would render it unnecessary to construct side roads with a view to the primary advantage of any other than the people dwelling in such side roads.

It will be convenient to deal with the matters that appear to call for observation on the relation of the existing byelaw system to town planning, under the following heads :—

(i) The necessity for relaxation of byelaws to secure cheapening of estate development.
(ii) The non-existence of any power in local authorities to waive or otherwise dispense with byelaws.
(iii) Conversely, the obligation on the local authority, if the plans are in accordance with the byelaws, to approve them.
(iv) Exceptional privileges as to byelaws granted before the Act was passed.
(v) Powers in existence before the Act was passed as to site planning and laying out new streets.
(vi) Byelaws in rural districts.

SECTION 55. (i) *The necessity for relaxation of byelaws to secure cheapening of estate development.*

It need hardly be repeated here that according to all experts, the present inelasticity and unimaginativeness of our model byelaws is one of the most vital, if not the most vital, obstruction to the economical success of all town planning schemes. The byelaws, formulated originally in good faith and largely no doubt in the best interests of the working classes, have, in process of time, become an inexorable system, effecting a great deal of good on the one hand, but on the other, affording ample excuse to the "jerry" builder for crowding as great a number of dwellings to the acre as possible. Even from the point of view of construction, the byelaws leave much to be desired. They are discursive enough as to thickness of walls, position of water-closets in relation to living-rooms and so forth, but even so they lag far behind the demands of progressive hygienic knowledge in respect to light and air, to say nothing of surroundings. Much will be tentative in the administration of this Act, and much will necessarily depend on co-operation notwithstanding the provisions for enforcement; without co-operation, or an enforcement which meets with the approval of the greatest number, it is clear the conflict between the economic interests of landlord and tenant must continue. Town planners, however, assert that there are devices (e.g., co-partnership schemes, redistribution methods, cheapening of road construction) by which the cost of estate development can be so considerably reduced as to yield a return of 4 per cent. on the original outlay; and that the only people who will suffer from the inauguration of town planning schemes will be the jerry builder and slum speculator.

What is wanted from a byelaw system is that it should attempt an adequate and comprehensive control of town development. Byelaws are wanted to secure adequate width for roads that are destined to become principal thoroughfares for heavy traffic. At present local authorities are unable to effect this object without buying up land at prohibitive prices or at a later stage demolishing obstructive buildings and thereby entailing a heavy burden on rates for compensation. It is absolutely essential to the notion of town planning to reduce the number of houses that can be erected to the acre. The model byelaws permit of no less than fifty-six, a result which is ostensibly due to the cost of estate development, but which is really due to that cause combined with the natural avarice of the jerry builder and house speculator. The Act hits these people hard, but at the same time that fact of itself will not effect the desired object without some machinery for cheapening the cost of building on undeveloped land. It has been shown in the notes to subsection (1) how a progressive cheapening of road construction graded according to the probable nature of the traffic to pass along the roads when the town is developed, will do much to lower the general cost of estate development and thereby enable the builder to reduce the number of houses per acre to some far lower figure and to interperse open spaces and allotments, the former of which at least are recognized essentials to public health, and the latter, if not so essential, nevertheless approximate urban to rural life.

The relaxing of the byelaws both as to new streets and buildings generally would effect much in the way of lessening the cost of estate development, and the Legislature no doubt contemplated that something could be done in this direction if only the owners of land and the local authorities could be induced to meet frequently in conference. Speaking of the ill effects of the inelasticity of byelaws, Mr. Nettlefold, in *Practical Housing*, says: "In England this dispersion of small houses, or, to use the current expression, the restriction of the number of houses per acre, cannot be carried out in practice without charging

house rents beyond the means of the poorer classes, owing to the heavy cost of estate development caused by our expensive regulations. In Bournville, for instance, Mr. Cadbury's model village, the house rents might have been considerably lower if the local authority had been able and willing to allow narrower macadam, whilst maintaining the width between the houses, where nothing heavier than an occasional cart is ever seen." The maintenance of a prescribed width between houses is necessary from the hygienic point of view, and it seems a rather dangerous latitude was allowed to builders in this respect in *Robinson* v. *Barton Eccles Local Board*, 1883, L.R. 8 App. Cas. 798; 53 L.J.Ch. 226; 50 L.T. 57; 32 W.R. 249; 48 J.P. 276, a decision on the construction of a bye-law made under section 157 of the Public Health Act, 1875. The byelaw in question provided that every "new" street should be laid out and formed of such width and at such level as the urban authority should in each case determine. The Court held that this referred merely to the width of the roadway and not to the width between the houses on opposite sides of the street, and that therefore the authority were not entitled to disapprove of and pull down the houses in course of erection on the ground that the building line was too near the roadway. The consequence of this decision is that builders in erecting the very maximum of houses to the acre find it to their advantage to bring them up as close to the actual roadway as possible and thereby inconvenience the tenants with the dust and noise of traffic far more than would be the case were the houses thrown back only a few feet.

(ii) *The non-existence of any power in local authorities to waive or otherwise dispense with byelaws.*

A district council cannot dispense with or waive the law as laid down in their byelaws inasmuch as it is not for their benefit that the byelaws were passed but for that of the public generally (*Baxter* v. *Bedford Corporation*, 1885, 1 T.L.R. 424).

Again, a local authority empowered to make byelaws has no power to sanction plans in contravention of byelaws properly made, in re *McIntosh and Pontypridd Improvements Co.*, 1891, 61 L.J.Q.B., p. 164. In that case an under-lessee of certain premises for an unexpired term of fifty years, under a covenant to repair and keep up the demised premises, was required by a local board to treat with them for the purchase of a strip of land on which the buildings stood. The under-lessee proposed to pull down the demised premises and re-erect them upon plans sanctioned by the local board, but in fact in contravention in some respects of their byelaws. The basis of compensation and the amount thereon were referred to arbitration. It was decided, in answer to questions stated by the arbitrator, that there being no negative covenant in the lease, the lessee was entitled to pull down and re-erect the premises; but that even though the plans had been passed by the local authority, he would not be entitled to erect buildings in contravention of any of their byelaws. Nor could the arbitrator take into consideration any plans in contravention of such byelaws. In giving judgment Wright, J., cited the above dictum of Cave, J., in *Baxter* v. *Bedford Corporation* as well as *Kerr* v. *Preston Corporation*, 46 L.J. Rep. Ch. 409, Law Rep. 6 Ch.D. 463. In the latter case plaintiff had brought forward his house, forming part of the street, beyond the line of frontage. The urban authority threatened to take summary proceedings under the Public Health Act, 1875. The plaintiff brought an action claiming an injunction to restrain the threatened proceedings on the ground that they were irregular under the Act; and also that the urban authority had been aware of, and had acquiesced in, the bringing

Section 55. forward of his building. A motion for an injunction was refused. It was held that the Court had no jurisdiction to restrain criminal proceedings for the prosecution of persons for a breach of the laws sanctioned by the Legislature. It is interesting to note that in this case it was said that the doctrine of acquiescence was inapplicable to public functionaries, although the Act gave the local authority a power to consent in writing to the setting forward of the building before the line of frontage. See also *Yabbicom* v. *King*, 1899, 1 Q.B. 444, where Day, J., said : " The district council could not control the law, and bye-laws properly made have the effect of laws ; a public body cannot any more than private persons dispense with laws that have to be administered ; they have no dispensing power whatever." The decision in *Clark* v. *Bloomfield*, 1 T.L.R. 323, seems slightly inconsistent with these dicta : in that case the question was whether the surveyor of the Hove Commissioners was bound under section 158 of the Public Health Act or the byelaws to give notice to the builder within a month that the Commissioners disapproved of the intended work. By the byelaws open spaces were to be left and no one was to build on them without the approval of the Commissioners. An " approved " plan is a plan which has been lawfully approved by a local authority, and not one which has merely received their approval in fact.—*Yabbicom* v. *King*. There were, however, other byelaws, which in effect said that when a person was going to erect a new building, he must send in notice to the surveyor, with plans. The Public Health Act requires the local authority to signify their approval or disapproval within a month. The defendant in this case sent in his notice and the plans, and a month elapsed without notice of disapproval, and he then proceeded with the building ; section 158 of the Public Health Act enacts that after the month had elapsed the Commissioners could not pull the building down. The authority delayed for over one month and then sought to recover penalties under the Act. Thus the defendant succeeded, or it is consistent with the decision that he succeeded, in erecting buildings contravening the local byelaws. The law, however, is clear in section 158 of the Public Health Act that approval *shall* be signified in one month. But it is not clear that section 158 says that after the month had elapsed the authority could not pull the building down, though that is what was laid down by *Coleridge, L. C. J.*, In *Masters* v. *Pontypool Local Board*, however, it was held that where a local board had not during the month prescribed by section 158 signified their disapproval of plans they could not afterwards object to the building being erected according to the lines laid down on the plan.

(iii) *Conversely, the obligatiou on the local authority, if the plans are in accordance with the bye-laws, to approve them.*

A rule nisi for a mandamus, calling upon a local authority to approve building plans was granted, where the plans had been disapproved on the ground that the intending builder had no right to build on the land at all. *Ex parte Crosby*, 1877, Q.B.D., 41 J.P. 740, and Glen's *Public Health*, p. 606.

In this context the decision in *King* v. *West Ham Borough Council* is to be noted (reported in *Times* newspaper of March 1). In this case application was made on behalf of the owner of a certain estate, known as the Connaught Gardens Building Estate, for a rule nisi for a mandamus to the Borough Council of West Ham to approve of certain building plans. On the applicant's behalf it was argued that the plans had been deposited and were in accordance with the local bye-laws, and that consequently, the local authority were bound under section 158

of the Public Health to approve the plans. The council gave as their reason for declining to approve them that they wished to consider a scheme for town planning, and that they desired to apply to the Local Government Board under section 54 of the Housing, Town Planning, etc., Act, 1909, in order to see whether a better use could be made of the estate than was shown on the building scheme. Reference was made, on the applicant's behalf, to the decision in *Reg.* v. *Tynemouth Rural District Council* (1896, 2 Q.B. 451). In that case, the owner of land in a rural district deposited with the rural district council plans of new streets, and also plans for new buildings to be erected on one of such streets, the predecessors of the council, the rural sanitary authority, having by virtue of urban powers conferred upon them by the Local Government Board, made bye-laws as to new streets and buildings under the provisions of the Local Government Act, 1858, corresponding to section 157 of the Public Health Act, 1875. The building plans showed that the houses were to be drained by means of certain drains, which were indicated as ending in the middle of one of the proposed new streets, but showed no sewers in the streets. It was admitted that a system of cesspools, earth-closets, or the like was unsuitable; but the council refused to approve the plans, unless the owner would undertake to construct at his own expense both the sewers in the streets or the necessary outfall sewer. The Court of Appeal affirmed the grant of a mandamus requiring the council to approve the plans, holding that they were not entitled to attach such a condition to their approval. It was held, on the authority of this case, that although the local authority had power under the new Act to apply for a scheme, that there was nothing in the Act enabling them to postpone the exercise of their functions in regard to approval of byelaws or in any other respect, on the ground that they were about to apply for authority to prepare a scheme. The Court therefore granted a rule nisi.

This decision is a serious handicap on the powers of the local authority in connexion with this Act, but unfortunately it is by no means clear that the decision cannot be carried still higher against the council. For there is nothing in the Act to prevent an owner from obtaining a rule nisi, even where the local authority have actually applied for authority to prepare or adopt a scheme. It is submitted that they must approve the owner's plans up to the last moment before the Board approve the planning scheme under section 54 (4) of this Act, nor does there seem to be any power under section 55 of this Act in the Board to make general provisions to meet a case of this sort or for the local authority to make special provisions to that end. It may be, however, that this last proposition is too extreme, and that it would be held that the local authority can suspend byelaws in relation to operations upon land included in a scheme not only at the time those operations are actually being undertaken in pursuance of the scheme as approved by the Board, but also as soon as the Board have under section 54 (2) authorized the local authority to prepare a scheme.

A hypothetical case may be taken by way of further illustration. A builder delivers to the district council plans in accordance with the byelaws. The council give him notice that they have included his particular plots in a town planning scheme as to which they have applied to the Local Government Board for approval. It is submitted that the council cannot prevent the builder from building on the plots affected by their scheme, and that the builder is entitled to commence building in accordance with the deposited plans as soon as the time has expired for the council either to approve or disapprove. If of course in building he contravenes the byelaws he must take the consequences; if not, it seems clear he is within his rights. For if he

SECTION 55. abstained from building, and the scheme fell through, his position would be this: he would not only prejudice himself as regards compensation under the Act for any improved value by reason of buildings finished after the scheme was applied for and before approval, but begun before the local authority made application to the Board for authority to prepare a scheme [section 58 (2)], but he would also, it is submitted, be liable in damages to any one for whom he had contracted to erect the buildings in question. If this view be not that which is ultimately taken by the Courts, it is difficult to see what the position of the parties would be on the Board refusing to approve of the town planning scheme. It seems that if the builder abstained from building, the council would have to indemnify him against damages and, possibly, compensate the owner or other person contracting with the builder, for the injury done to his property by reason of the non-erection of the buildings [see further notes to section 58 infra].

(iv) *Exceptional privileges as to byelaws granted before the Act was passed.*

From all these decided or hypothetical cases adverted to in (ii) and (iii) supra, it is clear that the existing byelaws are the root of the difficulties in the way of local authorities that may be desirous of developing estates on town planning lines. They are in their nature so absolute that they cannot be waived even though the cases above cited go to show that occasionally they have been evaded through some omission on the part of the approving authority. The power under section 182 of the Public Health Act to alter byelaws is of course immaterial.

That section runs: "All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act; Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act." This power, however, is apparently inadequate to meet the requirements of the new Act, because of the universality of its operation. What was wanted was a suspensory or dispensatory power as distinguished from one which repealed or even only altered a byelaw. Alterations for the benefit of builders, owners of land, local authorities and all others interested in a town planning scheme could not, clearly, be allowed to builders and owners undertaking operations outside the area included in the scheme.

There have, however, been other ways in which it has been possible to overcome the difficulties caused by local byelaws before this Act was passed, but they have been either very exceptional in their nature or, on the other hand, inappropriate to the kind of scheme that appears to be contemplated by this Act. In the case of Hull, the local byelaws prevented the erection of a garden suburb and it was only by appealing to the Local Government Board that the necessary change in the byelaws was sanctioned, a process which entailed time and expense.

In the model village of Earswick experimentation has been made in the policy of relaxing the stringency of the byelaws relating to the construction of new streets. The byelaws there do not require more than 18 feet roadways of macadam and a glance at the appearance of the village will at once show the advantage that ensues to the benefit of the tenants in the way of lower rents and more agreeable surroundings. But, of course, if every developed town with undeveloped land on its outskirts could, quoad its undeveloped land, regard itself as in the position of Earswick, it could no doubt make new byelaws after the model of those of Earswick, when the suspensory power given by

the Act would be superfluous. It seems doubtful, however, whether that would be the case and, in any event, a far more speedy and efficacious procedure is substituted by these special provisions under the above subsection, especially seeing that there is no obligation on the Board, as in the case of suspended public general enactments, to lay the draft scheme before Parliament. In the case of the Hampstead Garden Suburb, the promoters were freed from restrictive byelaws by special Act of Parliament. It is clear that, however fortunate the Trust were in securing their special trust, the expense and anxiety attendant on such a course might well result in the frustration or discouragement of numberless other and less fortunate companies or bodies of town planners. That the plan is eminently consistent with economy may be shewn by reference to the building leases of the Hampstead Garden Suburb Trust, and inasmuch as the building has provided space it is likewise apparent that the whole scheme as deducible from the lease, rests upon a sound economical basis. As to open spaces, e.g., the lessee must lay out an open space to be reserved for the common use and enjoyment of the tenants of the houses erected by him. Further, the lessee is not to permit any building to be occupied by such a number of persons as shall reduce the air space available for each individual over ten years of age below 500 cubic feet, or for each child under that age, below 250 cubic feet. But, as pointed out before in the notes to this section, schemes originated along the lines of the Hampstead Garden Suburb Trust involve the assumption that only well-to-do tenants are likely to be able to purchase building sites.

Until local authorities were able, under this section, to free themselves to a certain extent from the well-intentioned strictures of the model byelaws, one of the only ways in which to effect the object of securing satisfactory housing accommodation at reasonable rents was by the local authority purchasing undeveloped land and leasing it to a trust or society for development at a rent that would result in no burden being placed on the ratepayers. This was done in the case of the Hereford Co-operative Housing, Ltd. The land was fortunately secured at a low price and considerable economy was effected in road or street and sewer construction.

In short, it is only too obvious that our present byelaw system imposes burdens on landowners in matters of detail, while at the same time giving to local authorities no general controlling power. Their control is as it were dispersed and without reference to the harmony that ought to be engendered between all persons or companies engaged in the development of land in any particular neighbourhood; and not only do the byelaws in no way stop overcrowding, but necessarily force the owners of land to build as many houses as possible—i.e., fifty-six usually—per acre, with a view to earning some return on the outlay for estate development. It is of course essential in introducing special provisions under the above subsection relaxing the byelaws as to width or material of roads, streets, etc., and as to thickness of walls, that the local authority take particular care to receive in return binding assurances that the objects of the scheme in the way of reducing the number of houses per acre and providing open spaces be not frustrated.

(v) *Powers in existence before the Act was passed as to site-planning and laying out new streets.*

When works are actually in course of being undertaken, plans of new streets in connexion with such works must be submitted to the local authority for their approval [see *Knight's Annotated Model Bye-*

SECTION 55. *laws*, by W. A. Casson, p. 174, et seq.], but only in very rare instances was it possible before this Act, and then only by a very strained construction of the Public Health Act or the London Building Act, 1894, for a local authority to insist on the submission of a plan embracing the whole of a building estate indicating the way in which it was proposed to lay out the estate, the interspersal of open spaces (if any) and the relative positions of projected roads or streets to each other. There is nothing in any of the existing byelaws to prevent the builder from delivering plans dealing with a portion only of the estate, or rather, with each portion piecemeal as it was being developed. Usually the byelaws merely prescribed that plans should be deposited in duplicate, and not more than four sections with information showing the names of the landowners dealt with, the areas and number of the intended building lots, and the gradients and levels. [*Knight's Annotated Model Byelaws*, p. 173, No. 94: "Such person shall show on every such plan the names of the owners of the land through or over which such street shall be intended to pass, the intended level and width, the points of the compass, the intended mode of construction, the intended name of such street, and its intended position in relation to the streets nearest thereto, the size and number of the intended building lots, and the intended sites, height, class, and nature of the buildings to be erected therein, and the intended height of the division and fence walls thereon, and the name and address of the person intending to lay out such street. Such person shall show on every such section the levels of the present surface of the ground above some known datum, the intended level and rate or rates of inclination of the intended street, the level and inclinations of the streets with which it is intended that such street shall be connected and the intended level of the lowest floors of the intended buildings."] It was only in places where sections 57–60 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict., c. 34), were in force that such byelaw had to be or was in fact omitted, and various sections of that Act substituted. Similarly with other byelaws relating to paving, draining, cleansing and lighting towns.

In most towns there was no power to alter or vary the direction or position of the streets shown on the plans submitted to them. The only powers they had, in regard to streets, were under special Acts of Parliament; e.g., Leeds and Nottingham had exceptional powers by local Acts subject to payment of compensation. Barrow-in-Furness enjoyed by special Act the following classification as to streets: (*a*) main thoroughfares (first class), 80 feet wide, with 40 feet carriage way, and 20 feet footpaths; (*b*) main carriage road (second class), 60 feet wide, with 36 feet carriage way, and 12 feet footpaths; (*c*) subsidiary front streets (third class), 40 feet wide, with 25 feet carriage way, and 7 feet 6 inches footpaths; (*d*) a back street, 20 feet wide, only to be constructed at the rear of a continuous line of dwellings, unless the Corporation should otherwise allow. Then by section 44, it was provided that the Barrow Corporation might at their discretion reduce the width of the street if an open space were left along one or both sides of the street in front of the houses. Mr. Thompson, Chairman of the National Housing Reform Council, collects other instances of towns having a discretion to vary the width of any street, e.g. Nottingham, Leicester, Bacup, Bolton and Huddersfield; in Sunderland there is a power to increase the width to 50 feet for a leading thoroughfare and 60 feet if the buildings in it exceed 27 feet in height, the corporation to bear the cost of pavement of the increased width.

It is clear, however, that these site planning facilities are no more than incipient town planning schemes, and lack the comprehensiveness of detail essential to the sort of scheme contemplated by the Act.

But whether even in these cases of towns enjoying the advantages of special Acts of Parliament, it would be considered necessary, in applying for leave to prepare a town planning scheme under this Act, to suspend these special Acts, would depend on the advantages to be gained by the town planning scheme. It is submitted that the subsection does, at all events, include such special acts among the enactments, etc., that may be suspended; and the proviso, by referring particularly to public general Acts, appears to confirm this view.

(vi) *Byelaws in rural districts.*

The foregoing remarks as to the difficulties in the way of town planning apply only to those rural districts in which byelaws are in force. This, however, would probably apply to all the more important rural districts. In less than half the total number of rural districts are urban byelaws in force; but in the case of an almost equal number there were, in 1907, no byelaws as to new buildings at all.

A rural district council has no power conferred upon it by the Public Health Act to make byelaws as to streets and buildings. The power can be obtained in three ways:—

(1) The Local Government Board may invest the rural authority with the powers of an urban authority under section 276 of the Public Health Act, 1875, upon the application by the rural district authority for an order for such powers. (Section 276 runs: "The Local Government Board may, on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the *London Gazette* or in such manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers, rights, duties, capacities, liabilities and obligations of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers, rights, duties, liabilities, capacities and obligations are to be exercised and attach: provided that an order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.") Section 295 enacts that all orders made by the Local Government Board in pursuance of the Public Health Act, 1875, are binding and conclusive in respect of the matters to which they refer: but notwithstanding this, it was held in *Fenwick* v. *Rural Sanitary Authority of Croydon*, 1891, 2 Q.B. 216, that the justices were wrong in holding that the order of the Board, declaring section 150 of the Public Health Act to be in force as to a certain road in which the appellant's premises abutted, was conclusive that the road was a "street" within the meaning of that section.

(2) A rural authority may adopt so much of Part III. of the Public Health Acts Amendment Act, 1890, as can be adopted by rural district councils, and thereby obtain power to make

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byelaws in respect of new buildings without the necessity of making application to the Local Government Board. This power is the combined effect of sections 157 and 158 of the Public Health Act, 1895, and section 23 of the Public Health Acts Amendment Act, 1890.

Section 23 (3) of the 53 & 54 Vict. c. 59, Public Health Acts Amendment Act, 1890, enacts that :—

"The provisions of the said section [i.e., section 157 of the Public Health Act, 1875] (as amended by this Act) [i.e., the Act of 1890] so far as they relate to byelaws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to matters mentioned in subsections (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of water-closets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make byelaws in respect to the said matters, and to provide for the observance of such byelaws, and to enforce the same as if such powers were conferred on the rural authorities by virtue of any order of the Local Government Board made on the day when this part of this Act is adopted ; and section 158 of the Public Health Act, 1895, shall also apply to any such authority and shall be in force in every rural district where this part of this Act is adopted." Section 157 of the Public Health Act specifies the matters in respect of which an urban authority is empowered to make bye-laws : and section 158 relates to the necessity for deposit of plans of intended works, and the renewal of works made contrary to the byelaws.

(3) Under section 5 of the Public Health Acts Amendment Act, 1890, the Local Government Board may declare any of the provisions contained in that Act to be in force in a rural district or in any part of a rural district. Section 5 of the Public Health Acts Amendment Act, 1890, enacts as follows : "The Local Government Board may declare that any of the provisions contained in any part of this Act which are not in force in any rural sanitary district shall be in force in that district, or any part thereof, and may invest a rural sanitary authority with any of the powers, rights, duties, capacities, liabilities and obligations which an urban authority may acquire by adoption of any part of this Act, in like manner, and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section 276 of the Public Health Act, 1875, and in such case the date of the declaration of the Local Government Board under this section shall be substituted for the date of the adoption of this Act or any part thereof."

Application under section 276 of the Public Health Act, 1875 [(1)] can be made whether the council have adopted Part III. of the Act of 1890 or not, and the resolution should specify the powers which the council deem suitable to their particular district or to any one or more contributory places within it. As to (2) and (3), there is of course a set of rural model byelaws issued by the Board, but they do not exhaust the powers conferred by sections 157 and 158 of the Public Health Act, 1875, as amended by the Act of 1890. They relate only to eleven matters :—(1) The structure of walls and

foundations of new buildings for purposes of health; (2) the sufficiency of space about buildings to secure a free circulation of air; (3) the ventilation of buildings; (4) the drainage of buildings; (5) water closets, earth closets, ashpits and cesspools in connexion with buildings; (6) the closing of buildings unfit for human habitation; (7) the keeping of water-closets supplied with sufficient water for flushing; (8) the height of rooms to be used for human habitation; (9) the structure of floors; (10) the alteration of buildings; (11) the observance and enforcement of such byelaws by requiring notices and plans. But as to the structure of walls and foundations of new buildings, it seems that the byelaws are limited to purposes of health as distinct from stability. Where the rural code obtains or where the urban code has been adopted with the exemption clause, and where no byelaws exist at all, wooden cottages may still be built.

Mr. Thompson shows that in 1907, out of 667 districts 427 have byelaws with respect to new buildings, and that according to a return obtained in 1905, urban byelaws were then in force in the whole or in part of 283 rural districts, that byelaws on the rural model existed in the whole or in part of 138 rural districts, and that in 240 rural districts there were no byelaws as to new buildings.

Thus, in those districts where no byelaws exist, there are no hampering restrictions calling for the suspension of byelaws in the effort to develop the district on town planning lines. It is said, however, that rural districts have not shown any marked inclination to avail themselves of their new liberties under the altered byelaws of 1903, and continue to work on the old model.

Note to Subsection (3).

It was clear to every one concerned with the promotion of town planning or even the lesser idea of site planning as distinct from town development, that the existing system in this country of local governmental areas was bound to oppose considerable obstacles in the way of harmony and homogeneity in the formulation of schemes. The Chairman of the National Housing Reform Council pointed out that "our system of local government, of which in many respects we are so proud, and which affords so many opportunities for well-meaning individuals, and communities to give practical effect to their ideas on sanitary and social reform, has its drawbacks and its dangers. We need new areas for dealing with the regulation of town development, as what should be a self-contained community is too frequently made up of a number of different local government areas, the growth of which has outstretched the boundaries often arbitrarily determined for them many years ago." This overlapping of areas, in no sphere more conspicuous than in rural districts compounded of a number of contributory districts, almost necessarily stands in the way of the prime essential of all town planning schemes, the construction of wide main roads in view of future development, to say nothing of other means of communication between different districts. This subsection, therefore, makes some provision for the constitution of a body with controlling or regulating powers over a wider area than that of any particular local authority whose area or part of whose area may be affected by a town planning scheme. The provision made is unavoidably inadequate from the nature of things, and it is a little difficult to see why such provision as there is in this Act for constituting a composite responsible authority, or responsible authority having powers over a larger area than that included in its own area for all other purposes, should be incorporated in this particular section, which, according to the rubric, is concerned with the "contents of

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town planning schemes." The most appropriate place would seem to be in the second subsection to the next section of the Act, assuming that the principle of co-operation is the only one applicable to the exigencies of a case where local authorities are in conflict. "Other persons interested" [section 56 (2) (*a*) no doubt, includes other local authorities, e.g., highway authorities constituted by the county council. Presumably the Board is the final arbiter in this as in all other matters pertaining to town planning, save where Parliament itself is mentioned. Section 55 in giving the Board power to prescribe a set or sets of general provisions makes, in subsection (1) and Schedule IV., no mention of overlapping areas, or rather the constitution of the responsible authority in cases where two or more local authorities are concerned. It would have been easy to insert somewhere in Part II. of this Act a section analogous to section 38 of Part I., which runs, "Where, upon an application made by one of the local authorities concerned, the Local Government Board are satisfied that it is expedient that any local authorities should act jointly for any purposes of the Housing Acts, either generally or in any special case, the Board may by order make provision for the purpose, and any provisions so made shall have the same effect as if they were contained in a provisional order made under section 279 of the Public Health Act, 1875, for the formation of a United district." Subsection (2), however, makes provision for the issue of regulations defining the manner in which schemes shall contain special provisions defining, among other things, "the area to which the scheme is to apply," and "the authority who are to be responsible for enforcing the observance of the scheme," and these words seem comprehensive enough to cover the matter now dealt with. The notes to subsections (1) and (2), attempt to indicate the relation between "general" and "special provisions," and from the conclusions there arrived at, it seems that this is a procedural rather than substantive matter. If this be so, the Board can, where one local authority prepares or adopts a scheme embracing land in the ambit of another or other local authorities, in the last resort and failing co-operation between the authorities, enforce the scheme against those authorities that may oppose it. If two or more authorities concurrently formulate separate schemes, the Board can presumably accept one and reject the other or others.

[See regulations pursuant to section 56, Appendix, Article II., as to special notice to councils interested, and notes infra to clause (*b*) of subsection (2) of section 56.]

Local authorities may agree among themselves as to the proportions in which expenses preliminary to a town planning scheme may be borne, so far as they are jointly incurred. But the Housing Town Planning, etc., Act, 1909, does not seem to contemplate and apparently does not authorize a joint application for authority to prepare a scheme or the joint preparation of a scheme. Section 55 (3), however, admits of a joint body being constituted by the scheme to act as the responsible authority within the meaning of section 55 (2).

Procedure regulations of the Local Government Board.

56.—(1) The Local Government Board may make regulations for regulating generally the procedure to be adopted with respect to applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme, obtaining the approval of the Board to a scheme so prepared or adopted, and any inquiries, reports, notices, or other matters required in connexion with the preparation or adoption or the appro-

val of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof.

(2) Provision shall be made by those regulations—

(*a*) for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme at every stage of the proceedings, by means of conferences and such other means as may be provided by the regulations;

(*b*) for securing that notice of the proposal to prepare or adopt the scheme should be given at the earliest stage possible to any council interested in the land; and

(*c*) for dealing with the other matters mentioned in the Fifth Schedule to this Act.

Note to Subsection (1).

PROCEDURE REGULATIONS. [See also notes to subsections (2), (3) and (4) of section 54, and subsection (2) of section 55.]

Summary of the Regulations issued by the Board.

The regulations, which were issued by the Board on May 3, 1910, will be found in the Appendix. They number some thirty-six articles, and are divided, in conformity with Schedule V., into:—I. Procedure anterior to and for the purpose of an application for authority to prepare or adopt a scheme (Articles I. to XI.). II. Procedure during on and after preparation or adoption and before the approval of a scheme (Articles XII. to XXVI.). III. Procedure after the approval of a scheme (Article XXVI.); and IV. General (Articles XXVIII. to XXXVI.).

I. Article I. provides that when a local authority intends to apply to the Board for authority to prepare or adopt a scheme, it shall give due notice of its intention, by serving the owners, lessees, occupiers and other councils who may be interested (i.e., all persons or bodies interested), at least two months before making application, with a notice to that effect, and also by advertising in the local newspapers, within the same period of time. The Article also provides that the local authority shall deposit for inspection at some convenient place a map [known as Map No. 1], showing the land to be included in the intended scheme. No form of notice has been issued by the Board, but no doubt any notice will suffice if it describes the land proposed to be included, in general terms, and states the place at which Map No. 1 may be inspected.

Article II. provides for independent special notice to councils interested. This notice, it is to be observed, must be given within seven days after the local authority have decided to consider a proposal [see note to subsection (2) (*b*)]. During the period of two months or more pending application, the various parties interested will have an opportunity of considering how the scheme affects them, and of formulating any objections or representations they may wish to make

SECTION 56. with regard to the proposal. These objections and representations should be set down in writing, and submitted to the local authority, who, by Article III., are to take these objections and representations into their consideration, and to endeavour, by conferences between all persons and bodies interested, and by any other means available, to secure the co-operation of every one interested in promoting the scheme [see further as to co-operation, notes to subsection 2 (*a*)]. After this, the local authority may proceed to the application. Article IV. provides that the local authority shall make their application to the Board by a resolution, stating what land is intended to be included in the scheme, and whether it lies entirely within the area of the local authority applying, or wholly or partly within a neighbouring area. At the same time a second map, called Map No. 2, is to be prepared. On this map must be shown the land to be included in the scheme with boundary lines distinguishing between the areas of the different local authorities affected; there must in addition to this be indicated on this map the positions of any buildings erected or in course of erection; and there must also be distinctive colouring to indicate land likely to be used for building purposes and land already built upon. If there would be no substantial difference between Map No. 1 and Map No. 2, there will be no necessity to prepare Map No. 2; but whether a new one is prepared or not, there must be shown upon it, where the local authority intend to prepare the scheme themselves, these additional particulars: the lines and widths of the principal roads proposed to be made, the connexions of the proposed with existing roads, the lines of any existing sewers or any existing pipes or mains for gas, water or electricity, the areas proposed to be used for any special purposes such as open spaces [see as to this also notes to section 54 (1)], and an indication of the existing roads or ways it is proposed to stop up or divert [see notes to section 55 (1)] Article VI. In the case of an adopted scheme, these additional particulars must also be shown, together with all such further particulars as are suitable for indication, e.g., any proposals as to lines of sewers or gas, water and electricity pipes and mains (Article VII.). The application to the Board is to be made as follows: a certified copy of the resolution referred to above, with a covering letter is to be sent to the Board, together with a statement showing the number of members who voted for the resolution, the number who voted against it, the number who abstained, and the number who were absent. There must also be sent: (i) Map No. 2, or a certified copy; (ii) a copy of all objections made in writing so far as not withdrawn, or otherwise disposed of; (iii) a statutory declaration by the clerk or other competent person, specifying the manner in which the notices mentioned in Article I. (see above) were served; (iv), copies of the form of notice served in pursuance of Article I. of each newspaper containing the advertisement, and of the map (No. 1) deposited for inspection in pursuance of Article I.; (v) a map (Map No. 3) on the scale of one inch to the mile, showing, by distinguishing colours or lines, the land included, the district of the local authority and the area within a radius of five miles from any part of that district (where the land included in the scheme is wholly outside the area of the applying authority, a radius of five miles from the included land); and (vi) (in the case of an adopted scheme) a copy of the scheme, together with a statement of any modifications the local authority think should be made (Article VI.). These, however, are not all the requirements in connexion with an application. The local authority must also send: (i) a statement giving a general description of the scheme with information as to the character of the land included in it, the extent to which the scheme applies to land in course of development [see notes to section 54 (1)], or to land likely to be

used for building purposes; (ii) a statement of the reasons on which the local authority rely in support of their application; (iii) a statement of the reasons which the local authority think render it necessary to include land already built on or land not likely to be used for building purposes; (iv) a statement giving particulars of the buildings on the lands; (v) the information as to the extent to which provision may have to be made for the demolition or alteration of existing buildings; (vi) a statement giving reasons for supposing that any particular land is not likely to be used for building purposes; (vii) information as to the existing arrangements for sewerage, drainage, water supply and lighting in all the districts in which any part of the included land may be situate, and particulars as to any alterations that may be rendered necessary in regard to such arrangements; (viii) information as to ancient or other monuments; (ix) particulars as to the land of any government department that may be affected; and (x) proposals as to responsibility for enforcing the observance of the scheme and for the execution of any works which may have to be executed by a local authority [see notes to section 54 (2), and section 57] (Article VIII.). All the above statements particulars and information relate to all schemes adopted or otherwise. In the case of adopted schemes, Article IX. provides that the authority, when making application, shall give the following additional information: (i) Names and addresses of all owners, lessees and occupiers of land included; (ii) information as to the necessity for suspending byelaws, statutory enactments or other provisions; (iii) information as to the extent it may be necessary for any local authority to acquire land; (iv) information as to the compensation that will probably be claimed; (v) information as to the estimated increase in value that will accrue to any property included. The local authority must also give information when applying as to the estimated cost of carrying out the scheme, together with particulars as to the acreage, rates, population and debts of the local authority. If any part of the cost is expected to be borne by any other local authority, such other local authority shall also make a statement as to acreage, rates, etc., and send it to the applying authority who in their turn are to transmit it to the Board (Article X.). Finally, a notice of application having been made to the Board is to be inserted in some local newspaper or newspapers (Article XI.).

II. When the local authority have received from the Board the Order giving them authority to prepare or adopt a scheme, they must serve the various persons or bodies interested with notice that such authority has been given, and that a copy of the Order may be inspected. Similar notices are to be inserted in some local newspaper or newspapers. If any land has been excluded by the Order which was originally included, the fact of such exclusion must be notified to the owners, lessees and occupiers of such excluded land. Persons or bodies interested or affected should give notice in writing within twenty-one days of receiving notice that the Board has granted the application (Article XII.). Article XIII. provides that the local authority shall consider objections.

Article XIV. provides that the authority shall, after developing their proposals, prepare a draft scheme, and a map (Map No. 4) showing full details of these proposals. The matters more particularly to be indicated on the map are enumerated in the Article. In the case of an adopted scheme, the local authority are required, after having fully considered the proposals, to have a copy of the scheme printed, together with a memorandum of any modifications they propose to make, and a map similar to Map No. 4 above referred to (Article XV.).

Article XVI. provides that the local authority shall, at least one

SECTION 56. month before deciding upon the scheme to be submitted to the Board for approval, serve upon the persons interested a notice that a draft scheme has been prepared or (as the case may be) that they intend to adopt a scheme proposed by owners. They must also at the same time deposit for inspection for a period specified in the Article the draft scheme, and Map No. 4, and memorandum of modifications (referred to in Article XV.). The notices just previously referred to must state that the local authority are prepared to consider any written objections or representations made to them within the period allowed for inspection. At this stage opportunity must be given for further conferences (Article XVII.). The next step is for the local authority to make an order under their seal making or adopting the scheme. A map to be known as Map No. 5 (but similar to Map No. 4) is to be sealed in connexion with the order (Article XVIII.). The local authority then have to apply to the Board by resolution to approve the scheme (Article XIX.). A copy of the resolution requesting approval is to be submitted, accompanied by (i) copies of forms of notices served and a copy of each newspaper containing the advertisement pursuant to Article XII.; (i) a copy of the form of notice served, a copy of each newspaper containing the advertisement, a statement showing the several parcels of land in respect of which notice was served on each owner, lessee and occupier, a copy of the draft scheme deposited for inspection, and copies of the maps deposited for inspection, pursuant to Article XVI.; (iii) a sealed copy and three other copies of the order of the local authority mentioned in Article XVIII.; (iv) a map on the scale of six inches to the mile (Map No. 6), showing, among other things mentioned in Article XX., all recreation grounds or public open spaces, public elementary schools, buildings erected up to the time of sending the map, in the area included in the scheme, in the district of the local authority, and, where the land included in a scheme is wholly outside the district of the local authority, in the area intervening between that land and the district of the local authority; (iv) a map (Map No. 7) showing the area of the land included in the scheme so divided as to indicate the portions of such land belonging to different owners; (v) a copy of all written objections; (vi) a statement of the various particulars mentioned in Articles VIII. and IX. so far as these are not contained in the scheme; (vii) a statement of the various particulars enumerated in paragraph (*b*) of Article XXI. so far as these are not contained in the scheme; (viii) information as to the estimated cost of the scheme so far as the cost is to be borne by any local authority, which information is to be given under the heads indicated in paragraph (*a*) of Article XXII. and (ix.) a list and copy of all local Acts, provisional orders, byelaws or regulations (Articles XX. to XXII.). Having submitted the scheme for approval, the local authority must next give notice of such submission by advertisement, which advertisement must state that a copy of the scheme may be inspected by persons affected at a place specified in the notice. A copy of the newspaper is then to be forwarded to the Board (Article XXIII.). If the Board propose to make any modifications or attach any conditions to the scheme so submitted for their approval and transmit to the local authority a draft order for approval with such modifications and conditions, the local authority shall within fourteen days after receipt of the draft order serve a copy of the draft order upon all persons interested, and give notice by advertisement in some local newspaper to the effect that the Board have caused such draft order to be prepared, that a copy of it may be inspected on any week-day during one month after the date of such notice, and that any written objections and representations may be sent to the Board (Article XXIV.). Within one month after receipt of the draft order, the local authority

shall (i) furnish the Board with any objections or representations they may desire to make in regard to the Board's proposed modifications and conditions, and (ii) transmit a copy of the form of notice and of each newspaper containing the advertisement pursuant to Article XXIV. When the Board have finally decided to approve the scheme, with or without modifications, and to notify the local authority of their decision, and to transmit a draft order for approving the scheme, the local authority shall within fourteen days after receipt of such notification give notice in some local paper of the Board's intention to approve the scheme and to publish, after receipt from the local authority of a copy of the newspaper containing such notice, in the *London Gazette* (in accordance with section 54 (4) of the Act) a notice of their intention. The advertisement is also to state that persons interested may within twenty-one days from the date of publication in the *London Gazette* object (in the manner prescribed by Article XXVI.) to the approval of the scheme. The local authority must deposit the draft order for inspection at some convenient place for the full period of twenty-one days from the date of the before mentioned publication in the *London Gazette* (Article XXV.). (It will be noticed that there will only be two draft orders from the Board, i.e. one under Article XXIV. and one under Article XXV., where the Board propose to make modifications or attach conditions to the submitted scheme.)

III. Article XXVII. provides that the local authority shall publish notice of the approval of the scheme by advertisement. The notice must also state that the order of the Board approving the scheme may be inspected. A copy of the order must be served not earlier than the second day after the first publication upon all the persons interested, together with a notice that any map or plan referred to in the order or scheme may be inspected, and that any necessary explanation or information may be obtained. The local authority must then send to the Board (i) a copy of the form of notice so served and of the newspaper just previously mentioned and (ii) a copy of the order of the Board.

IV. Article XXVIII. provides for notices, etc., to the Board of Agriculture, where the scheme provides for the acquisition of any land forming part of any common open space or allotment within the meaning of section 73 of the Act, and to the Commissioners of Works, if any land included in the scheme is situate within the prescribed distance of any royal palace or park (see section 74 of the Act).

Article XXIX. provides for notices in certain cases to the Board of Trade and the Light Railway Commissioners.

Article XXX. provides the manner of service of the various notices.

Article XXXII. provides that the maps required shall be Ordnance maps.

Article XXXIV. makes provision for departures from the Regulations.

General Applicability of the Regulations.

It will be seen that the Board have drawn the Regulations avowedly so as to be of general application. In their circular letter they say that the Regulations "will extend on the one hand to schemes which "relate to small areas or contain only proposals of a simple character, "and affecting few interests, and on the other hand to schemes which "may deal with extensive areas and affect numerous ownerships and "other interests and involve serious considerations of expense." Strictly, however, a scheme under this part of the new Act should not relate merely to small areas. The whole object of Part II. of this Act is to secure the completion of large constructive projects. Under the

SECTION 56. Housing of the Working Classes Act (1890 to 1909), and Part II. of this Act [see section 76 (1)] a scheme, regarded generally, may vary from a mere closing order to a complex and detailed town planning scheme. In one sense, housing reform is purely a question of degree, in that local needs or the conflict of local interests may bring it about that a few narrow and evil courts and alleys are patched up by a small improvement scheme, or reconstruction scheme under section 39 of the principal Act; or, on the other hand, the outcome of local effort may be an improvement scheme, properly so called under Part I. of the principal Act, dealing more or less adequately with unhealthy areas and buildings. But the spirit of this Act, in regard to town planning, is rather that under Part II., housing shall cease to be a question of degree. There is and ought to be a distinct line of demarcation between the mere renovation of unhealthy dwellings and the formulation of a scheme projected mainly with an eye to future development. Thus stated it becomes clear that town planning schemes are concerned rather with undeveloped land than with crowded areas, or land already built upon. Vested interests must almost of necessity make it absolutely impossible to make large or small towns the subject of a scheme, because that would involve pulling the town down and rebuilding it. But then again, a town planning scheme does not relate merely to what we may with convenience rather than accuracy term virgin soil; it must usually have a certain relation to some industry, and be directed to securing healthy dwellings and surroundings for people of the working classes who are actually engaged in these industries, and who must of necessity have dwelling accommodation at no great distance from the centre of industry. The authors of a town planning scheme, therefore, cannot begin, as it were, *de novo*; they must do what they can with what already exists, and endeavour to harmonize that which is done and cannot be undone with what they hope to effect in the future. It is just this conflict between past and present that distinguishes town planning schemes proper from some of the garden-cities and certain of those co-partnership schemes which favour the more well-to-do, and are permeated by nothing of that public spirit and civic responsibility that call for the co-operation not of the few but of all.

The Regulations capable of Relaxation in particular Cases.

The Regulations, though of general application are not inelastic. "It is probable," the circular continues, "that the circumstances of "particular cases will be such as to require or justify some relaxation "or alteration of the Regulations in their application to the case, and "the Board have, with a view to meeting any such case, included in "Article XXXIV. provisions which will enable them, subject to the "proviso to that Article, to dispense with or vary any requirement of "the Regulations where reasonable cause is shown." And then in the next paragraph: "In the absence of authority for departure from any "provisions of the Regulations, great care should be taken to comply "strictly with them, as any failure in this respect might involve "considerable delay and expense."

Article XXXIV. runs: "Where the Board are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of these Regulations, or for varying any such requirement, the Board may, by order or otherwise, as they may think fit, give the necessary dispensation, or may make and give effect to the necessary variation and to any incidents or consequences of that variation; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation,

the local authority or other authorities or persons, as the case may be, shall comply in all respects with the condition or variation, and with any requirement of the order or other writing or direction of the Board giving the dispensation or making the variation, as if the condition, variation or requirement formed part of these Regulations:

Provided that the Board shall not exercise their powers under this Article in such a manner as to dispense with any provisions of these Regulations which are necessary to give effect to the requirements of the Act of 1909 or as so to vary any such provisions that they would cease to give effect to those requirements." These observations of the Board seem to be just, especially seeing that the Regulations are framed so as to keep in view the requirements of all the sections of this part of this Act. It is clear that the greatest difficulties will have been overcome as soon as all persons interested have at some preliminary local inquiry come to some measure of agreement in support of a common scheme. A great deal of expense and delay might unnecessarily be caused if all manner of unimportant objections were entertained, and for this reason, the Board have limited as far as possible the specific requirements to be complied with for the purpose of an application to them for authority to prepare or adopt a town planning scheme, i.e. the procedure anterior to and for the purpose of such application [Schedule V., 1] is simplified to as great an extent as possible. There will of necessity be many conflicting interests to overcome at the preliminary stage, and unless the procedure at that stage were rapid, no scheme would ever get within measurable distance of fruition. To some persons or bodies must be given the power to initiate a scheme in places where it may be eminently desirable to have one, and provided everything is done consistently with justice to opposed interests, it is unnecessary to delay the promotion of a scheme by useless and fruitless inquiries and conferences.

Importance of observing the Procedure anterior to Application for Authority to prepare or adopt a Scheme—Expense.

For these reasons the procedure outlined in the first eleven Articles, is perhaps that to which local authorities should most carefully direct their attention. There is of course nothing in the Act outside what may be inferred from this section and Schedule V. to give anything like statutory force to any particular Article in the Regulations [see notes to subsection (2) of section 55], and the question whether or not they are authorized by the Act will eventually be one for the courts; the words of the above section, taken with Schedule V., seem wide enough to cover every Article, and it would be unwise for local authorities to omit any steps prescribed in the Articles in the hope that more expedition might be attained. The Board intimate, as regards the procedure anterior to application, that they do not think that as a general rule it should be necessary for a local authority to incur much expense at that stage of the proceedings. These earlier Articles should, however, as above indicated, be closely adhered to, because, though the Board may dispense with or vary any Articles these earlier Articles deal with the all-important matters of securing co-operation on the part of the local authority with the owners of land and other persons interested, and of securing that notice of proposals to prepare or adopt schemes be given to councils interested. If these preliminaries were ignored, objection to the scheme as ultimately approved by the Board would almost assuredly be preferred under subsection (4) of section 54; and not improbably the scheme might be thrown out. In any event, great expense might be incurred by way of compensation to builders, or various other contracting parties who would not unreasonably say,

SECTION 56. e.g., that they would not have begun their operations had they had due notice of the proposal to apply for a scheme, or some opportunity of seeing clearly what land was included in it, and whether or not their own operations were likely to be prejudicial to it. But, as said before, useless and fruitless conferences would only entail unnecessary trouble and expense, and therefore the safer and more expeditious course is a more or less literal adherence to the Articles regulating the preliminary procedure. Some expense might well be avoided by reserving the full development of the details until after the preliminary stage is passed. The Board in their circular confirm this view, but at the same time it may be observed that this rather applies to schemes in relation to land almost quite undeveloped, and certainly can hardly apply to adopted schemes or owners' schemes. Economy at this stage in such cases as these might well mean unnecessary expense in the way of maps and conferences and even compensation in the later stages.

Local Inquiry.

It will be seen that the Regulations make no provision for local inquiries. In their circular before alluded to the Board say that "in "ordinary circumstances the Board would probably find it necessary "or desirable to direct a local inquiry before giving the necessary author- "ity to prepare or adopt a scheme, and the Board may here repeat what "was stated in their circular letter of December 31, 1909, viz., that "if it is thought that at any stage prior to the submission of a scheme "for their approval, the assistance or advice of any of the Board's "experts might tend to facilitate agreements with owners concerned "or to save labour or expense, the Board will be quite ready to arrange "for such assistance or advice being given." It is curious that the Regulations make no provision for the holding of inquiries, as not only does section 63 authorize inquiries, by applying section 85 of the principal Act [which enables the Board to hold such local inquiries as the Board see fit], but this subsection says: "The Local Government Board may make regulations for regulating generally the procedure to be adopted with respect to . . . any inquiries . . . in connexion with the preparation or adoption or the approval of the scheme, etc."

In all probability the Board desire that as much as possible should be accomplished by conferences arranged by the persons interested or affected. As regards "inquiries as to the beginning and the progress and completion of works, and other action under the scheme" [Schedule V., 3 (*b*) the Board intimate that they propose to defer the making of any regulations under such head until they are in a better position for determining the precise Regulations which may be desirable.

Maps.

The use of this word in the regulations reveals a curious discrepancy. It will be seen that the word is nowhere to be found in the Act itself, and in Schedule V. the word "plans" is used. It is hardly likely that any point of substance is involved herein. In the London Building Acts (Amendment) Act, 1905, the expression "plans" means plans, sections and elevations [5 Ed. vii. c. 6 (1) ix.]. The words "plan" and "map" are regarded as synonymous in Stroud's *Judicial Dictionary*. Evidently the Board regarded the use of the word "plan" as anomalous in the case of a larger area of land than any that might be supposed to be contemplated by the London Building Acts.

It will be seen that the Regulations make apparently somewhat bewildering provisions as to maps, there being no less than seven maps

to be either prepared or copied at various stages of the progress of a scheme, and at times, it is a little difficult to see wherein one map can differ essentially from another. In the circular above alluded to the Board say: "It will be observed that the Regulations require the "preparation of maps at various stages of the proceedings in connexion "with a scheme. In Article XVIII. of the Regulations express provision "is made under which the maps prepared in accordance with Article "XIV. or Article XV. may be used for the purposes of Article XVIII. "and be marked as required by that Article, but such user would only "be permissible if the maps required under the later Article would be "identical in every respect with those previously prepared for the "purposes of Article XIV. or Article XV. This provision has been "inserted with the view of saving the expense of preparing further "maps, and the Board would not offer any objection to a similar "course being followed, subject to similar conditions, as regards the "use of Map No. 1 (required by Article I. of the Regulations) in lieu "of preparing a further map (Map No. 2) for the purpose of Article IV. "It should be clearly understood, however, that a map which has "been prepared and deposited to meet specific requirements of an "Article of the Regulations should not be subsequently altered to meet "the requirements of a subsequent Article." This, therefore, may reduce the number of the maps to five, by making Map No. 4 do duty for Map No. 5, and No. 1 for No. 2. Map No. 4 is the first in the series that contains the fully developed and considered proposals of the local authority. Up to that time the nature of things has demanded that the full details of the scheme should be reserved until the local authority have been given authority to prepare or adopt the scheme. There is not much room for alteration in the scheme between Article XIV. (or XV.) and Article XVIII. unless it be that the local authority have given effect to the objections or representations that may be preferred under Article XVI. It seems unnecessary to go to the expense of preparing new maps merely for the sake of incorporating the effect of a few more or less trifling objections. Again it is difficult to see how there can be any material difference between the map of the land proposed to be included in the scheme which is deposited in accordance with Article I. and the map to be submitted to the Board in connexion with the application for authority to prepare a scheme. Much, however, depends upon how far the scheme is really in existence in an informal way before the local authority begin to act under the Regulations. A scheme of landowners—i.e. an "adopted scheme"—is likely to be in quite a developed state by the time that the local authority are invited to take official cognizance of it.

There seems to be no apparent object for Map No. 6, which under Article XX. is to be sent to the Board together with the application for approval. For Map No. 5 (or No. 4 marked as No. 5) has to be prepared and sealed in connexion with the resolution applying for approval, and this map contains all that Map No. 6 can or does contain according to the Regulations. If the purpose of Map No. 6 were that the Board might have a separate map specifically showing the things referred to in the last paragraph of division (*c*) of Article XX., especially the destinction between the buildings begun to be erected after application for leave to prepare scheme and other buildings, all that can be said is that as this is so important a matter in regard to claims for compensation, it is not likely to be omitted in the various other maps, statements, particulars and information. There is, indeed, throughout the Regulations an extraordinary redundancy of particulars, statements and so forth, and local authorities would be well advised, with a view to saving expense, to get the Board to omit as many of the unnecessary steps as possible. What the vitally impor-

SECTION 56. tant steps are appears rather from the next subsection, paragraphs (*a*) and (*b*).

Colouring of Maps.

The Board refer in their circular to the suggestion that provision should be made in the Regulations for definite schemes of colouring being adopted in the preparation of maps, so as to provide for uniformity of practice in regard to the colouring of all maps relating to town planning schemes. Upon this point they wrote that they "have not regarded it as practicable to carry out this suggestion, but they think it would be desirable that, in preparing the maps required at the several stages of a scheme, the local authority should as far as possible follow the same scheme of colouring throughout all the maps, so that, e.g., if a particular colour is used to indicate some special feature on Map No. 1, the same colour should be used to indicate the same feature on any map at a later stage of the proceedings."

Contour Models.

As to the suggestion that contour models of the areas proposed to be included should be prepared, the Board wrote that they " have not " considered it desirable to include any provision on this matter in " the Regulations, and they are disposed to think that it would not " as a general rule be expedient to incur the expense of preparing such " models and that it would be found in practice that plans with contour " lines drawn or coloured thereon so as to show the variations in the "levels of the land would meet adequately the necessities of the " case."

Note to Subsection (2).

(*a*) CO-OPERATION—CONFERENCES.

Without co-operation very little indeed can be accomplished under this part of the Act. In the circular of May 3, 1910, the Board say : " In the circular letter which they addressed to town councils and urban "and rural district councils on December 31, 1909, the Board drew "attention to the importance of co-operation on the part of the local "authority with the owners and other persons interested in the land "proposed to be included in a town planning scheme. The Board desire "again to emphasize this point. Subsection (2) of section 56 enacts "[the circular here sets out paragraph (2) of the above subsection]. . . "The Board have included provisions on this subject in the regulations, "which also contain provisions requiring notices to be given at various "stages of the procedure to owners and other persons, including local "authorities or companies, interested or affected and facilities to be "afforded to all such persons to place their views or objections before "the local authority, or, at the later stage, the Board."

Article III. provides that " the local authority before making an application to the Board for authority to prepare or adopt a scheme shall consider any objections or representations made to them in writing in reference to the proposed scheme whether by owners or other persons interested in the land proposed to be included in the scheme, or by owners or other persons interested in any lands in the neighbourhood of the land proposed to be included in the scheme which may be affected by the scheme, or by the council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised, or by any other council who may be interested in or affected by the scheme ; and shall endeavour by conferences between the local authority or their officers and

such owners, persons, or councils and by any other means available, to secure the co-operation of such owners, persons or councils in promoting the scheme."

"The local authority shall arrange for at least one meeting being held at which all such owners, persons, or councils as aforesaid shall be entitled to attend or be represented for the purpose of considering the proposed scheme. Notice of the time and place fixed for such meeting shall be served by the local authority upon all such owners, persons, or councils so far as they can ascertain the same not less than fourteen days before the time fixed for the meeting." Article XVII. applies Article III. to the second part of the procedure, viz., to the time when the local authority have received authority to prepare or adopt a scheme but have not yet decided upon the scheme to be submitted for approval under section 54, subsection (4).

Apart from provisions as to publication of notices, maps, draft schemes, orders and so forth, which seem directed rather to secure as far as possible that people shall not commence building operations after the local authority have received authority to prepare a scheme, than co-operation, there is but little in the Regulations upon this matter. In the case of adopted schemes, the section has not much, if any, significance: in the case of prepared schemes much must be left to local initiation in the way of bringing "persons interested" together. Moreover, though there are scattered throughout the various stages in the procedure opportunities for preferring objections, the Regulations are curiously silent as to the duties of the local authority in regard to those objections. The Articles dealing with this matter never go further than to say that the local authority are to "consider" the objections and representations made, but they never state precisely what shape the deliberations of the local authority are to assume, or specifically, whether they are to be followed by any practical result. One would have supposed some opportunity should have been given to do more than prefer written objections, and that persons affected or interested should have an opportunity of being heard.

"PERSONS INTERESTED IN THE LAND PROPOSED TO BE INCLUDED IN THE SCHEME."

These words are presumably narrower than "persons affected, including persons representing architectural or archaeological societies or otherwise interested in the amenity of the proposed scheme" [Schedule V., 2 (*c*)]. "Persons interested in the land" would include (1) owners, lessees and occupiers or reputed owners, lessees and occupiers of land included in the scheme; (2) any local authority in whose district part of the land included in the scheme may lie. The words in the Schedule would no doubt include in addition to these: (1) owners, etc., of land not included in the scheme, but situate in its neighbourhood so as to be capable of being affected by it; (2) any highway authority whose highways may be affected by the scheme; (3) members of architectural and archaeological societies, and perhaps other classes may suggest themselves as coming under the Schedule.

If there be no distinction between being "interested in the land" and "interested in the amenity of the proposed scheme" or "persons affected" then it may be that the Regulations make insufficient provision for securing the co-operation of all these persons, inasmuch as there is no provision for service of notices on certain of these classes.

"COUNCIL INTERESTED IN THE LAND."

Article II. runs: "With the view of securing that notice of the proposal to apply for authority to prepare or adopt a scheme in respect

SECTION 57. of any land shall be given at the earliest stage possible to any council interested in the land, the local authority, independently of the notices required to be given as aforesaid, shall, within seven days after they have decided to consider a proposal for authority to prepare or adopt a scheme in reference to any area of land, serve notice of their decision upon any council interested in the land."

The expression "Council interested in the land" includes county council where a main road is or may be affected by the scheme.

Councils interested may therefore have more than one notice served on them in the early stages of a scheme. Other "persons" interested, who are to be served at all, are to be served at least two months before the local authority make their application for leave to prepare or adopt a scheme (Article I.). This of course may be long after they have "decided to consider a proposal for authority to prepare" under Article II. It is submitted that the only way this decision can be expressed is by resolution. Within seven days of such resolution, then, this special notice must be served.

(*c*) "OTHER MATTERS . . . ACT."

No regulations have yet been made as to "inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme" [Schedule V., 3 (*b*)]. The Board do not consider they are yet in a position to issue such regulations. They apply the same observation to the absence of provisions in the regulations "in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof" [section 56 (1)].

The last section of Schedule V. is important, especially as to the restrictions on the number of buildings which may be erected on one acre, and the height and character of those buildings. Those restrictions may involve some loss to landowners, in respect of which there is no compensation allowed [see Section 59 (2)]. But such depreciation in value would be counterbalanced by the economy in the matter of road-construction and the enhanced value of land lying farther out. The number of houses per acre in the case of a scheme providing for small dwellings would, no doubt, vary from about ten to sixteen to each acre. The advantage to amenity by the prohibition of high tenement houses is obvious.

DELAY IN PROGRESS OF A SCHEME UNAVOIDABLE.

In issuing the regulations the Board say that they "think it desirable that local authorities and others concerned in the making of a town planning scheme should realize at the outset that a considerable period must of necessity elapse between the time of the inception of a scheme and its final approval. The necessity of giving effect to the clearly expressed intention of the Act in regard to affording persons interested or affected, full opportunity of considering the proposals at all stages involves considerable delay, but the Board in settling the regulations have made the periods for notices as short as possible, having due regard to the objects to be attained. So far as administrative action upon the part of the Board is concerned they will endeavour to expedite as much as is practicable the dealing with applications to them in regard to town planning schemes, but the careful consideration of a case in all its aspects and the arrangements for the holding of the necessary local inquiries must necessarily take a substantial amount of time."

Power to enforce scheme.

57.—(1) The responsible authority may at any time, after giving such notice as may be provided by a town planning scheme and in accordance with the provisions of the scheme—

(*a*) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or

(*b*) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by a responsible authority under this section may be recovered from the persons in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, that question shall be referred to the Local Government Board, and shall, unless the parties otherwise agree, be determined by the Board as arbitrators, and the decision of the Board shall be final and conclusive and binding on all persons.

Note to Subsection (1).

EXTENT OF THE POWERS OF THE RESPONSIBLE AUTHORITY IN ENFORCING A SCHEME.

It will be seen that the power of the local authority to execute works is confined to such works as the planning scheme expressly makes it incumbent upon some person to execute. The Board, in interpreting this subsection in their memorandum, state that the local authority cannot execute works which it is made a person's duty to execute otherwise than by the scheme, as, e.g., under the Public Health Acts, nor works which the scheme does not expressly require to be carried out, but in respect of which it requires, if they be executed at all, that they shall be executed in a particular way.

It seems that it would not be necessary in all cases to pull down buildings which contravene the scheme immediately upon the Board signifying their approval under subsection (4) of section 54. It would conduce to the keeping down of expenses to do so only as the area covered by the scheme developed, and provision should be made in the scheme accordingly.

This subsection appears to confer all the power the responsible authority have to enforce a scheme. There is no power to make highways or streets (except it be the duty of some person to construct streets under paragraph *b*), or to erect dwelling-houses, as in Part I. of the new Act, where the authority are promoting improvement or reconstruction schemes, or providing dwellings for the working classes.

SECTION 57. Such enforcing powers as are given by the section, are, however, quite in accord with the object of Part II., which is rather to control and direct the development of land than to confer on local governing bodies any power to develop the land themselves.

INDIRECT POWER OF THE RESPONSIBLE AUTHORITY TO MAKE HIGHWAYS OR ERECT BUILDINGS IN PURSUANCE OF A SCHEME.

Thus stated, however, it becomes obvious that the local authority have indirectly powers which are tantamount to a direct power to make highways. But until time and experience show to what extent the responsible authority are given constructive powers by this Act—powers, that is, which would enable them, subject to payment of compensation, to plan *de novo* garden cities, or, after the manner of the German municipal authorities, to control the disposition of the streets, gardens, squares and buildings of a new town, and in either case to carry out the work themselves under all the conditions of municipal trading—it is impossible to do more here than cite what seem to be the material parts of this part of the Act, and infer therefrom the power of the responsible authority. The material words appear to be contained in the first three subsections, and subsection (7) of section 54, and whether the responsible authority have power directly or only indirectly or negatively to construct streets or highways or even buildings (apart from the power given under paragraph (*b*) of the above section) is a question to be answered only by reference to the kind of land which section 54 permits to be included in a scheme. As indicated in the notes to section 54 supra, all kinds of land appear capable of being included, though evidently the spirit of the Act contemplates the inclusion rather of land "in course of development" or "likely to be developed": phrases, it need hardly be reiterated, which are of extraordinary vagueness, no hint being given in the Act whether "likely" is to be construed by reference to existing contracts, or indeed upon what ground the assumption of probability is to be made. (The Regulations it will be noticed invite the local authority, under Article VIII., themselves to answer these questions.) But whatever these expressions mean, section 54 does undoubtedly permit the inclusion of any land of whatsoever kind, and to almost any extent, subject only to conditions as to adjacency or juxtaposition as vague as the expressions just previously alluded to. If, then, land entirely undeveloped and unbuilt upon, be included in the scheme on the assumption that it is likely to be used for building purposes, and the plans indicate the passage through this land of a wide main artery, whose is the duty to construct the artery when the scheme is approved and when it is found that the land is not used for building, nor appears likely to be so used? The present law of course results in throwing the cost of street construction on the adjoining occupiers until such time as the road becomes repairable at large. In the above supposititious circumstances, it can only be assumed that either the construction of the main artery will remain in abeyance until the land along the sides of its projected lines is being built upon, or that the position of the land relatively to other land included is such that the immediate construction of the road is imperative whether the sides be built upon or not. In the latter case it must be the duty of the local authority to construct the street, and it is to be noted that this conclusion is not arrived at by reference to paragraph (*b*) of the above section, because that paragraph assumes the existence of the duty in some one. Thus again, the inference is that the local authority indirectly have the power which, nowhere mentioned in the Act, must be assumed not to be directly given. On the other hand, dealing solely with para-

graph (*b*) of the above section, the question arises whether there is any distinction, at all events in some circumstances, between the enforcement of a scheme and its performance. If the "person" whose duty it is to execute works under the scheme is not the responsible authority themselves, then the appropriate word is "enforce"; but there can be no meaning in the word (apart from the ultimate action of the Board) "enforce" as distinct from "perform" in the case where the local authority have prepared the scheme, and saddled themselves with duties under it, in the manner shown to be possible in this note.

Note to Subsection (3).

"Building." The Act follows the London Building Acts in nowhere defining what a "building" is. The matter is unimportant in regard to this section, but might cause difficulties in section 54 when it is attempted to determine the meaning of "to be used for building purposes." The almost total absence of definitions in this part of the Act, is, however, immaterial here by reason of the use of the words "or work" immediately after "building" in this section, which word no doubt would include new buildings, buildings of all the classes enumerated by the London Building Act, under sections 5 (25), (26), (28), 13 (5), 203, and "structures" (in this Act only used in Schedule IV.) within the meaning of the London Building Acts.

"ARBITRATORS." See section 62 as to arbitrations by the Board.

Compensation in respect of property injuriously affected by scheme, etc.

58.—(1) Any person whose property is injuriously affected by the making of a town planning scheme, shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the Local Government Board, be entitled to obtain compensation in respect thereof from the responsible authority.

(2) A person shall not be entitled to obtain compensation under this section on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme, after the time at which the application for authority to prepare the scheme was made, or after such other time as the Local Government Board may fix for the purpose:

Provided that this provision shall not apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before the application was made.

(3) Where, by the making of any town planning scheme, any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any)

SECTION 58. limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Local Government Board), shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase.

(4) Any question as to whether any property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this section or which the responsible authority are entitled to recover from a person whose property is increased in value, shall be determined by the arbitration of a single arbitrator appointed by the Local Government Board, unless the parties agree on some other method of determination.

(5) Any amount due under this section as compensation to a person aggrieved from a responsible authority, or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt.

(6) Where a town planning scheme is revoked by an order of the Local Government Board under this Act any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation in accordance with this section in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme.

Note to Subsection (1).

"ANY PERSON."

The subsection does not exclude persons whose property is not included in the scheme, but is "injuriously affected" by the making of the scheme.

"PROPERTY . . . INJURIOUSLY AFFECTED BY THE MAKING OF A TOWN PLANNING SCHEME."

"Property": Absence of direct Authority under the Act for restricting the Meaning to Proprietary Rights relating to Land.

There can be no doubt that all three of the expressions in the above sentence will be a constant source of litigation. What the meaning, for the purposes of this Act, of "property," "injuriously affected" and "making a town planning scheme," may be, can only be presumed upon general legal principles in the absence of decisions. Speaking jurisprudentially, "property" (cf. German Vermögensrecht) includes everything that a man has. Did the Legislature contemplate the

possibility of having to give compensation in respect of any and every right in or over one's own or other person's personal or real property, that may be said to be "injuriously affected by the scheme"? And if the word is to be said to be confined to proprietary rights relating to land, what authority under the statute is there for so restricting the meaning? Suppose, e.g., the difficulty in *R.* v. *Metropolitan Board of Works*, 1869, L.R. 4 Q.B. 358, arose, where claimant occupying premises near the river, had been accustomed to draw water therefrom, and to bring barges to a dry dock, as public rights, and not as rights attached to premises, was obstructed in the enjoyment of these rights by the construction of an embankment under statutory powers, was held disentitled because his right was not incidental to land. What authority would there be under this Act to exclude the claimant? And if such a person could claim under this Act, why not every member of the public in respect of an infringed public right?

"Injuriously affected": Analogy of Section 68 of the Lands Clauses Act, 1845.

Again, is the meaning to be attached to "injuriously affected" the same as that established by many cases on section 68 of the Lands Clauses Consolidation Act, 1845? In that Act, compensation is given in respect of "any lands or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works. . . ." The cases establish that compensation for "injuriously affecting" is only payable where these four conditions are satisfied:—

1. The injury must be due to the execution of the works [as distinguished from their subsequent user].
2. The injury must be such as would, but for the statute authorizing the works be actionable.
3. There must be an infringement of a right incident to land.
4. The damage must be due to actual interference with the land or some right therein [Jepson's *Lands Clauses Acts*].

In the interpretation of this phrase the Courts may conceivably have recourse to section 68 of the Lands Clauses Acts. But if they do, how are they entitled to get rid of the difficulties opposed to such analogy by "property" and "making of a scheme?"

For section 68 of the Lands Clauses Act of 1845 relates only to rights incident to land. In other words, if the Courts supply the defect from section 68 of the Lands Clauses Act, how much of established meaning of that section could they appropriately borrow? The first of the four conditions noticed above is, that the injury must be *due to the execution of works*. But the present section says "by the *making* of a scheme." When is a scheme made—before or after approval by the Board? And if before approval as well as after, then at what stage prior to the order of approval can the scheme be said to be made? The answer to this last question will at once be suggested by subsection (2), and it will be said that as one may not get compensation for buildings begun to be erected after the local authority have applied for leave to prepare a scheme, the natural inference is that the point of time at and after which the injurious affection may accrue is the resolution of the local authority to apply for a scheme. But this inference necessitates some violence to the language used in the subsection, apart from the objection to defining any expression by reference to negative clauses.

SECTION 58. **Indirect Authority under Subsection (2) for Restricting the Meaning of "Property" to Rights incident to Land.**

It is submitted that, as the meaning of these various expressions will be sought from other parts of this section, "property" must be restricted in meaning by subsection (2). There it is enacted that a person shall not be entitled to compensation on account of anything done "*with respect to land* included in the scheme," and these words seem to suggest payment of compensation in respect only of something to be done to land, i.e., of rights incident to land. This seems to be borne out by the words "land affected by the provisions" in subsection (2) of section 59. Reverting to the analogy of section 68 of the Lands Clauses Act, the principle in *Ricket* v. *Metropolitan Railway Company*, 1867, L.R. 2 H.L. 175, "that the injury must be done to land or some interest in land, and a mere personal injury, though connected with the enjoyment of particular land, is not ground for compensation," is, it is submitted, too exclusive, inasmuch as subsection (2) recognizes "contracts," and any "other thing done with respect to land" as subject matter for compensation. But if a town planning scheme result in a person losing the benefit of a contract it would hardly be said that any injury were done to the land or any interest in the land. A contract to erect a building on land is not an interest in land; it is a personal right or chose in action. A principle more to be relied upon in inferring the meaning of "property injuriously affected" for the purposes of this Act is that in *Metropolitan Board of Works* v. *McCarthy*, 1874, L.R. 7 H.L.: "The test which appears "to explain and reconcile the cases upon the words 'injuriously "affected' is this, that where by the construction of the works there "is a physical interference with any right, public or private, of which "the owners or occupiers of property are by law entitled to make "use in connexion with such property, and which gives an additional "market value to such property apart from the uses to which any "particular owner or occupier might put it, there is a title to com-"pensation if by reason of such interference the property as a property "is lessened in value" (per Lord Cairns at p. 253). But see infra.

"Property": Analogy of the Housing of the Working Classes Act, 1890.

It may be noted here that the word "property" occurs in section 21 (1) of the Housing of the Working Classes Act, 1890, in a somewhat similar context to this section.

Section 21 (1) of the Housing, etc., Act, 1890, is as follows: "Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance "of this part of this Act, requires to be assessed—

"(*a*) The estimate of the value of such lands or interests shall be "based upon the fair market value, as estimated at the time "of the valuation being made of such lands, and of the "several interests in such lands, due regard being had to "the nature and then condition of the property, and the "probable duration of the buildings in their existing state, "and to the state of repair thereof. . . ."

"(*b*) In such estimate any addition to or improvement of the property made after the date of the publication in pursuance "of this part of this Act of an advertisement stating the "fact of the improvement scheme having been made, shall "not (unless such addition or improvement was necessary "for the maintenance of the property in a proper state of "repair) be included, nor in the case of any interest acquired "after the said date shall any separate estimate of the value

" thereof be made so as to increase the amount of compen- " sation to be paid for the lands."

On the interpretation of the word " property," it will be observed that the above section uses three expressions, " lands," " interests or lands " and " property." " Property " in this context, therefore, can only mean " lands or interests in lands." Section 93 of the Act of 1890 defines " land " so as to include any right over land, but " lands " in section 21 probably excludes " incorporeal hereditaments " : these latter are dealt with in section 22 under the marginal heading of " extinction of rights of way and other easements."

There can be no doubt " property " in section 58 (1) of this Act includes both corporeal and incorporeal hereditaments in lands. But it may well include other things, such as goodwill, unless the construction gathered from various expressions used in other sections of this Act as suggested above, restricts the ambit of the word to the matters embraced by the principles to be deduced from the decisions under the Lands Clauses Acts.

The important thing to notice here is that this section is not specifically concerned with compulsory purchase, and indeed, the purpose of this Part of this Act makes it more than probable that the section is primarily concerned with land not compulsorily purchased, but in respect to which the owner's building operations are to be controlled by a scheme made in accordance with the Act. It is for this reason that it is submitted the Lands Clauses Acts do not directly apply, especially seeing that it would have been easy for the Legislature to have incorporated in the Act a reference to those Acts (cf. section 20 of the Housing, etc., Act, 1890, providing for the extent to which the Lands Clauses Acts apply to that Act).

As to the incorporation of the provisions of the Lands Clauses Acts in the case of acquisition by local authorities of land composed in a scheme, under section 60 (1) of this Act, see the note to that subsection.

" Point of time at which Injury arises."

The earliest point of time at which the injurious affection may accrue is, it is submitted, as soon as the claimant acts upon the advertisement published by the local authority, in accordance with Article I. of the Regulations, which must be at least two months before the application to prepare or adopt the scheme is made by the local authority. It is true this construction does violence to the natural meaning of the words " by the making of a scheme," because *ex hypothesi* so far from being made, the authority to make one is not even applied for. But it is submitted that it is the construction warranted by subsection (2), which excludes compensation in the case of contracts begun after application, and by subsection (1) of section 59 which uses the words " injuriously affected by reason of any provisions contained in a town planning scheme." In short, this section seems to justify a man in throwing up his contracts as soon as he learns through the official advertisement of the intention of the local authority, and in claiming compensation from the responsible authority in respect of the consequences of his breaches or loss of benefit.

Circular of the Local Government Board upon the Interpretation of the Subsection.

This generality of phraseology has no doubt induced the Board in their circular of May 3, 1910, to say : " In a case in which the owners of land propose a scheme for the adoption of the local authority, the

SECTION 58. Board consider it very desirable that the local authority should, before applying to the Board for authority to adopt the scheme, *obtain from the owners* definite information or undertakings on the question of any compensation which might become payable in respect of property injuriously affected by the scheme in the event of its becoming operative, whether in respect of property of the owners proposing the scheme, or of the property of any other person. . . . In regard also to a scheme proposed to be prepared by a local authority, it appears to be a matter of the greatest importance that these provisions as to compensation should be carefully borne in mind from the earliest stage of the proceedings, and that, as in the case of the proposed adoption of a scheme, the local authority should endeavour to secure definite agreements with any person who may be affected by the proposals." The circular then makes an attempt to interpret the words " by the making of any [or a] town planning scheme " in this subsection and in subsection (3) : " The Board have no authority to determine the interpretation to be placed upon provisions in the Act, but they are advised that, in giving effect to the section, no loss or gain in value of the property affected which is not due solely to the making of the scheme can be taken into account. There will no doubt be exceptional cases, but as a general rule, the loss or gain in value would seem to depend upon a comparison of the full value of the property immediately prior to and irrespective of the making of the scheme with the full value of the property immediately after the making of the scheme, regard being had to the provisions of section 59 of the Act." The words after " exceptional cases " appear to be quite contrary to the provisions of the Act, for the various reasons above stated, in so far as they purport to be anything more than a statement of the measure or basis of compensation. What authority is there for the words " immediately prior." Property may well deteriorate in value from the moment the advertisement in pursuance of Article I. appears in the local newspapers ; it may deteriorate still more after application granted under section 54 (2). Moreover, it is not clear at what point of time a scheme is made, though it is submitted the time is when the draft scheme is published. As regards the words in the circular restricting the loss or gain to that due " *solely* to the making of the scheme," it need hardly be pointed out that even if the word " solely " were to be found in the Act it would cause as much difficulty as many other words in this section. It can be safely asserted here that the question whether the loss or gain in value be due to the scheme will be a prolific source of litigation unless the *rationes decidendi* of the cases on section 68 of the Lands Clauses Act, 1845, be applied in some test case. The words of that section are clearer as to the subject matter of compensation and the cause of loss than this section. Section 68 runs : " If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works. . . ." But for reasons already stated it is doubtful whether the principles upon which the cases under this section of the Lands Clauses Act have been decided can apply to cases under the above section of the new Act. Moreover, " by the execution of the works " (section 68 of this Land Clauses Act) and " by the making of a scheme " or " by reason of any provisions contained in a town planning scheme " [section 59 (1)] are very different words.

On the whole it is conceived that the arbitrator or the Courts, if the parties agree to the latter tribunal [see subsection (4)]), cannot be guided by the decisions under section 68 of the Lands Clauses Act, as no one of the four conditions previously enumerated, except possibly the third, can be said to be implicitly con-

templated by these sections (58 and 59) of the new Act; for as to the first condition, this Act makes no mention of the "execution of works" as the cause of loss or gain, or "enforcement" or "carrying into execution" as distinct from the mere "making of a scheme." As to the second, which refers to actionable nuisance, it need only be pointed out that its relevance depends on the fact of works being executed. The third confines the giving of compensation to rights incident to land, and it has been shown (supra) how it can only be by a forced construction of this Act that the word "property" can be said to be restricted to the meaning of a "right incident to land." The fourth condition depends upon a present or actual physical interference with a right incident to land, and it seems impossible to apply the condition by saying that the "provisions of the scheme must *contemplate* in the future the physical interference, etc." The Board, mindful of these intricacies, has suggested, as pointed out above, a rough and ready way out of the difficulty—ascertain the value before and after the making of the scheme—which, for the various reasons above stated, and in view of the fact that the value of "property" at the time a scheme is approved may differ very much from the value when works under the scheme are actually executed or in course of execution, does not seem to meet the exigencies of the case.

Analogy of the London Building Act, 1894.

It may be noted here that section 15 of the London Building Act, 1894, allows compensation for loss or injury caused by conditions of sanction to plans prescribing greater width of streets or greater prescribed distance from the centre of the roadway; and section 23 allows compensation for damage or expenses caused by setting back projecting buildings. The expression "injury" occurs in section 15, but not "injuriously affected." Neither expression is to be found in section 23. Section 155 of the Public Health Act, 1875, gives urban authorities power to regulate the line of buildings subject to the payment of compensation.

"When any house or building situated in any street in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building, or the front thereof, to be built or rebuilt in the same situation, shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith.

"The urban authority shall pay or render compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act" (38 & 39 Vict. c. 55, section 155).

This section contains no words similar to "injuriously affected."

The other enactments relating to keeping houses to the building line—section 3 of the Public Health (Buildings in Streets) Act, 1888, and section 157 of the Public Health Act, 1875, affecting buildings in new streets only—so far from using words similar to "injuriously affected" do not even allow compensation [see also section 59 (2)].

"NOT BEING LESS THAN THREE MONTHS . . . REGULATIONS MADE BY THE LOCAL GOVERNMENT BOARD."

Claimants are not likely to suffer injustice on the ground of being out of time, through ignorance of the existence or exact details of a scheme, as the Regulations make ample provision for publicity through-

SECTION 58. out all the stages of a scheme. Article XXVII. prescribes the manner of publishing notice of the approval of the scheme by the Board. That Article also makes provision for inspection of maps or plans during a period of three months from the date of the order of the Board approving the scheme, and for service of notices to the effect that a copy of the order and of maps or plans referred to in the order or scheme may be inspected, and that any necessary explanation will be furnished in regard to these documents.

Note to Subsection (2).

The Regulations make provision in Article XI. for the prompt advertising by the local authority of the fact of their having made application [see notes to section 56 (1) and Appendix].

As to what property can be the subject of compensation, see subsection (1) and notes thereto.

"Building." See note to section 57 (3).

"Contract." Presumably if compensation may be given in respect of contracts broken on account of the application for authority to make a scheme, it will be limited to a contract enforceable by a decree for specific performance.

"PROVIDED, ETC."

See notes to section 55 (2) sub nom. "suspending . . . byelaws" (iii) at p. iii. The decision in the *King* v. *West Ham Borough Council* (reported in the *Times* newspaper, March 18), establishes that a council cannot decline to approve plans of a builder submitted in accordance with section 158 of the Public Health Act, 1875, if they showed compliance with the byelaws, on the ground that the local authority were contemplating the making of a town planning scheme embracing the land in connexion with which the plans were submitted. The case was decided on the authority of *Reg.* v. *Tynemouth Rural District Council*, 1896, 2 Q.B. 451, where it was held that the rural district council were not entitled to attach conditions to their approval of plans submitted under section 158 of the Public Health Act, 1875, and in accordance with the byelaws. The Court held in the *King* v. *West Ham Borough Council* that there was nothing in the Act of 1909 enabling the local authority to postpone the exercise of their functions in regard to approval of byelaws on the ground that they were about to apply for authority to prepare a scheme, and that consequently a rule nisi for a mandamus must issue. On principle there seems to be nothing to prevent a mandamus issuing even where the application for authority to prepare or adopt a scheme has actually been made. In the case of buildings begun to be erected after application made by the local authority under section 54, and in respect to which plans in accordance with the byelaws have been delivered, and the period of approval or disapproval under section 158 has elapsed, the position seems to be this: if the owner goes on with his works right up to the time of the Board approving the town planning scheme he will by reason of the proviso to this subsection, receive no compensation if the buildings are subsequently demolished as contravening the provisions of the scheme; if he ceases operations he will be liable in damages to the other contracting party, and will get no compensation on the ground that he has merely abstained from performing a contract that ought never to have been made. The curious result is that the local authority can demolish without compensation buildings of which they were bound to allow the erection. If in these circumstances the scheme were revoked or were not approved by the Board, the owner, if he had not abstained from building, would be in no worse

position; if, on the other hand, he had abstained from building, he might be liable in damages besides losing the improved value of his land. To this it may be urged that the law can take no cognizance of possible benefits from contracts entered into with a full knowledge that they were made in defiance of an application for authority to prepare a scheme. But it is nowhere stated in the Act that when an application is made, all building operations independently of the scheme are to cease save so far as they are in pursuance of contracts entered into before application. It is merely enacted that no compensation will be paid in respect of such contracts. The conclusion seems irresistible, that the framers of the Act really believed the law had vested in the local authority the power to approve or disapprove plans according as they appeared conformable to a scheme not yet in existence, and as to which nothing more had been done than to apply for leave to make it. It need hardly be said that an enactment excluding a contract from compensation in certain events can have no effect on the legality or validity of the contract qua contract.

As to the case of a contract entered into before application, it seems that on principle it would be unwise to abstain from building merely on the assumption that compensation may be payable. The previous section as indicated in the notes supra is by no means clear as to what "property" is subject matter for compensation, or whether it includes a broken contract. But even if this subsection, by saying what contracts will not be subjects of compensation, does imply that there are contracts that will, the owner, by abstaining on the strength of the subsection, may prejudice himself as regards compensation under the Act for any improved value due to the buildings that would have been erected but for his so abstaining. In other words the measure of compensation for the loss of benefit under a contract may not be the same as that for demolished buildings or improved value of land as due to such buildings.

In regard to the owner's liabilities or rights as against other persons, the principle in *Dye* v. *Patman*, 1898, 62 J.P. 135, applies. That was a decision on the Housing of the Working Classes Act, 1890, involving the construction of section 21, which enacts that "whenever the compensation payable in respect of any lands or of any interests in lands proposed to be taken compulsorily . . . requires to be assessed—

"(*b*) In such estimate any addition to or improvement of the property made after the date of the publication . . . of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included. . . ."

The effect of the decision in the above case was that a notice given under section 7 of the principal Act, did not in any way affect the owner's rights as against persons other than the local authority. That principle will apply to the present subsection, substituting for the advertisement referred to in the Act of 1890, the application for authority to prepare a scheme, mentioned in this subsection.

As regards improvements introduced on the property after the time at which compensation becomes payable, it will be observed that there is no provision in this Act exactly similar to section 21 (1) (*a*) of the Housing of the Working Classes Act, 1890. That section enacts that the estimate of the value of such lands or interests shall be based upon the fair market value, *as estimated at the time of the valuation being made* of such lands, and of the several interests in such lands, *due regard being had to the nature and then condition of the property*, and

SECTION 58.

the probable duration of the buildings in their existing state, and to the state of repair thereof. . . ."

Under that Act, therefore, the condition of the property at the date of the publication of the advertisement fixes the subject matter of assessment, and consequently owners cannot increase the amount of compensation by adding to or improving their land, or renewing expiring leases up to the time of valuation being made. The effect of subsection (2) of the new Act seems to be the same, except that owners would seem to have considerable opportunity of improving their property between the time of publication of advertisements under Article I. of the Regulations and the time of application for authority to prepare a scheme. But the fact that the owner's rights in his property have been fettered between the application for authority and the time of valuation would, it is conceived, be itself a matter to be taken into consideration by the arbitrator in assessing the compensation (cf. *Cranwell* v. *Mayor of London*, L.R. 5, Ex. 284, a decision on section 121 of the Lands Clauses Act, 1845).

As to the principle of assessment, see note to the next subsection.

As to the incorporation of the provisions of the Lands Clauses Acts in the case of compulsory purchase by local authorities of land comprised in a town planning scheme, see the note to subsection (1) of section 60.

This enactment is of great importance where new buildings are in contemplation, for the local authority cannot refuse to confirm plans as to new streets and buildings submitted to them under the Public Health Acts and byelaws made thereunder on the ground that a town planning scheme is under consideration. Plans must either be approved or disapproved, and the only grounds of disapproval are non-compliance with byelaws or with some statutory provision. If they are not approved within one month they become operative by reason of the enactment in section 158 of the Public Health Act, 1875.

Note to Subsection (3).

"INCREASED IN VALUE."

Difficulty of Ascertaining on what Principle to assume an Increase in Value.

The suggestions as to the contents of a town planning scheme contained in the note to subsection (1) of section 55, will serve to show how property may become enhanced in value by reason of, e.g., provisions converting land into valuable frontage, which, but for the scheme, might for years have remained undeveloped. There are no words in this subsection importing that half this increased value will be taken only where the increase is due *solely* to the making of the scheme. But whether that be the construction of this subsection or not, there will be inevitable difficulty in ascertaining upon what principle to base the assumption of an increase due to the scheme. Presumably the way out of the difficulty will be the simple expedient of comparing the values immediately before and after the making of the scheme and then appropriating to the local authority one half the difference.

Original Valuation under the Finance Act (1909-10), 1910, Probable Application of, to the Purposes of this Section.

As to what "value" in this context means, it may be pointed out here that the original valuation under the Finance Act (1909–10), 1910, furnishes a standard of land values which may be used for purposes other than those mentioned in that Act, e.g., for the compulsory acquisition of land for public improvement, such as town planning,

for rating purposes, etc. The Finance Act, 1910, provides for the ascertainment of an "assessable site value," by various calculations or deductions, based upon the market value of the fee-simple of the land. When once this assessable site value is fixed and recorded, it will be used as a starting-point from which to ascertain the value on which increment value duty and undeveloped land duty are to be paid. It may be assumed that the principle for both "increment value" and "betterment value" are the same, the two expressions being cognate, but whereas the former indicates "an accretion of value due to some origin which cannot be traced or to a cause not specially connected with the owner, such as the general progress in wealth of the community," the latter "implies that an accretion of value has arisen from some specific cause, e.g., a public improvement in the vicinity." [Cox-Sinclair and Hynes, *Land Values*].

The increase in the above subsection is in the nature of "betterment charge" [cf. subsection (8) of section 38 of the Housing of the Working Classes Act, 1890]. There is no provision in this section for apportionment as between different owners benefited as in subsection (9) of section 38 of the Housing Act, 1890; but it may be assumed the arbitrator has power to make an apportionment. Subsection (5) infra makes provision for the recovery of the increase summarily as a civil debt; but there is nothing said in the section as to the incidence of the charge for increase as between owner and occupier or any words implying that the amount of the increase is to be regarded as private improvement expenses justifying the levy of a rate on the occupier, as under section 213 of the Public Health Act, 1875. The analogy between this section of the new Act and section 38 of the Housing Act, 1890, at once ceases when regard is had to the specific words in the latter Act as to buildings enhanced in value by the removal of an obstructive building. In the present section difficulties arise from the vague generality of the words "property increased in value," words which make it impossible not only to say with certainty what the incidence of the charge may be but how to apply the valuation under the Finance Act, 1910. The "property" which is contemplated by the Act as susceptible of being affected by the provisions of a town planning scheme may include land of almost any description and extent [see notes to section 54 (1), (3) and (7) supra] with this qualification, that the land primarily concerned must be "land in course of development" or "land likely to be built upon." If "property" be taken to mean "interest in land" and "owner" to include all lessees or mortgagees except persons holding or entitled to the rents and profits under a lease the original term whereof is less than twenty-one years [cf. section 49 (2) supra], then it can be assumed that the person from whom the responsible authority will be entitled to recover the increase is practically the same as the person interested within the meaning of the Finance Act, 1910, except that in that Act an "interest" in land does not include any leasehold interest under a lease which at its creation was for a term not exceeding fourteen years. If the valuation for the purposes of the Finance Act, 1910, applies to the ascertainment of the increase in value under this section, it will conduce to convenience to set out here as shortly as the extraordinarily elaborate provisions in that Act permit, the principles on which that valuation is made. For the purposes of increment value duty, the increment value of any land is deemed to be the amount (if any) by which the site value of the land on the occasion on which increment value duty is to be collected, as ascertained in accordance with subsection (2) of section 2 of the Finance Act, 1910, exceeds the original site value of the land as ascertained in accordance with the general provisions of the first part of the Finance Act, 1910, as to valuation (section 2 of the Finance Act, 1910).

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The " original site value " is the sum fixed once for all under section 27 as being the assessable site value, and this is ascertained in the manner set out in subsection (4) of section 25 of the Finance Act. The assessable site value means the total value, after making the deductions to be found in section 25 (4) of the Finance Act, (q.v. infra.) " Total value " is taken to mean the market value of the land as it stands, with all its improvements, buildings, structures, etc., and subject to certain burdens, charges and restrictions, such as rates, taxes, tithes, easements and rights of common which always apply to it. On every occasion on which increment value duty is to be collected, the increment value ascertained will therefore be the result of a subtraction from the total value or consideration, after the statutory deductions, of a fixed sum representing the original site value. Suppose for example, 100 acres of land are held in fee simple by A., and that the original site value is fixed under section 27 of the Finance Act at £4,000, and that the deductions allowable under section 25 (4) on each occasion [see section 2 (2) of the Finance Act], are £700. If the fee simple be sold for £6,000, the site value on that occasion will be £6,000 – £700 = £5,300, and the increment value £5,300 – £4,000 = £1,300. Suppose again, the 100 acres to be leased by A.'s purchaser for 99 years at a rent of £400 a year. At 18 years' purchase the value of the consideration will be £7,200. The value of the fee simple (which is to be calculated on the basis of the value of the consideration for the grant of the lease) may be assumed to be about £8,000. The site value will now be £8,000 – £700 = £7,300, and the increment value £7,300 – £4,000 = £3,300. The deductions, under section 25 (4), to be made from the total value in order to arrive at the assessable site value, are (*a*) the same amount as is to be deducted for the purpose of arriving at full site value from gross value. (Gross value means the amount which the fee simple might be expected to realize if sold in the open market by a willing seller free from incumbrance or any burden or charge other than rates or taxes. Full site value means " the amount which remains after deducting from gross value the difference (if any) between that value and the value which the fee simple might be expected to realize if the land were divested of any buildings, structures, growing timber, etc. [section 25 (2)].) (*b*) Any part of the total value which is proved to be directly attributable to works executed or capital expenditure bona fide incurred for the purpose of improving the value of the land as building land or for the purpose of any business, trade or industry other than agriculture. (*c*) Any part of the total value proved to be directly attributable to the appropriation of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public. (*d*) Any part of the total value which is proved to be directly attributable to the expenditure of money on the redemption of any land tax or any fixed charge, or to goodwill or any other matter personal to the owner, occupier, or other person interested for the time being in the land. (*e*) Any sums which it would be necessary to expend in order to divest the land of buildings, timber trees, or other things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value, and of which it would be necessary to divest the land for the purpose of realizing the full site value. More shortly put, the assessable site value upon the basis of which the owner is to be taxed, is arrived at by taking the market price of the land (practically the same thing as " total value "), deduct therefrom the value of the buildings, a sum representing the increased value of the site by reason of those buildings being there, and the cost of capital expenditure on improvements. The market price would include what under the Lands Clauses Acts would be termed its " adaptability "

or value for urban purposes [section 25 (4), Finance Act, 1910]. The undeveloped land duty is charged upon site value ascertained according to the provisions of section 25 (4) of the Finance Act, 1910. The amount of the site value on which the duty is to be charged is the value adopted as the original site value, or assessable site value as ascertained under any subsequent periodical valuation. There is a reduction made in respect of increment value duty paid, by a sum equal to five times the amount so paid. Undeveloped land means land (i) which has not been developed by the erection of dwelling houses or of buildings for the purposes of any business, trade, or industry, other than agriculture (but inclusive of glass-houses and green-houses), or (ii) which is not otherwise used bona fide for the purposes of any business, trade or industry other than agriculture. Land which was once developed may revert to the condition of undeveloped land.

Basis of Valuation for the Purpose of Compensation under Part II. of the Act.

What now is to be assumed to be the basis of valuation for the purpose of ascertaining the amount of compensation, or the amount of increase in value, for the purposes of Part II. of the Housing, Town Planning Act? If land not built upon but "likely to be used for building purposes" be included in the scheme, and to be taken the same as undeveloped land within the meaning of section 16 of the Finance Act, 1910, the basis will presumably be the "total value" less the deductions mentioned in section 25 (4), i.e., the original site value or assessable site value. But it is not so clear how the value will be arrived at after the making of a scheme until the land is actually transferred. But it is still more difficult to ascertain how far the increase in value (if any) is attributable to the scheme or, to use the Board's interpretation, "solely" to the scheme. The probability of the land being built upon is only ascertainable, it is submitted, by reference to contracts actually existing or other circumstances such as the history and prospects of the particular land and of other land in its vicinity. If a considerable time elapses between the publication of a notice under Article I. of the Regulations, it is clear the site value may at once rise and strictly it seems the valuation ought to take into account the ascending and descending curve, to use a rating expression, between that time and the time at which the scheme is applied for. It is, therefore, to the advantage of the owner that the Board suggest that the full value *immediately* before application is to be the first of the two sums to be ascertained.

Special Adaptability.

Mention was made above of special adaptability of land as an element in the ascertainment of the amount which the fee simple of the land, if sold at the time in the open market by a willing seller, in its then condition, might be expected to realize, e.g., where land is compulsorily taken for the purpose of making a reservoir, the fact that the land has peculiar natural advantages for supplying a district or area, apart from any value created or enhanced by the scheme or act for appropriating the water to a particular local authority, may be taken in consideration in the assessment of compensation; and it is not necessary that it should be proved that the land could be similarly used by other specified local authorities [*In re an arbitration between Gough and the Aspatria, Silloth and District Joint Water Board*, 1904, 1 K.B. 417]. The principles on which this case was decided will, it is conceived, apply to the subsection now being discussed. There is obviously a difficulty, however, in distinguishing, as regards the adaptability

Section 58. for urban purposes, between the enhanced value of the property due to such adaptability generally and without reference to any concrete scheme, and the enhanced value that may be said to be brought out solely by reason of the fact of a projected planning scheme. It would seem that it is only in the former case that this element of adaptability could be invoked to increase the market value of the property before the application for authority to prepare a scheme were sent to the Board. Collins, M.R., delivering judgment in the above cited case, said : " To exclude the element of adaptability, it would be necessary, as it seems to me, to shew that there is no reasonable possibility of the site coming into the market. The value of the possibility if it exist is a question entirely for the arbitrator." In the case of land " in course of development," there would of course be no difficulty, assuming development to connote the same things as in the Finance Act in including this element of value. But in the case of land " likely to be used for building purposes," which presumably means " undeveloped land " (see note to section 54), it might conceivably be difficult to furnish any satisfactory ground upon which to assume that the site were coming into the market. So that " adaptability " in the abstract or without reference to the possibility indicated by Collins, M.R., may not be taken into account ; but it is obviously a very difficult thing to say of any undeveloped land, having considerable natural advantages, that there is or is not a "reasonable possibility." If the neighbouring town be developing—and this would be so if the local authority had arrived at the point of projecting a scheme—the land, if included, would almost necessarily be marketable. If only " marketable," however, as between the owner and the local authority, it might probably be assumed by the arbitrator that the adaptability was not an element to be taken into account for the purpose of ascertaining the value of the property prior to the application under section 54. But as to this, *Lucas and the Chesterfield Gas and Water Board*, 1909, 1 K.B. 16, decides that where land is taken compulsorily for the purpose of making a reservoir, and the land has a special adaptability for the construction of a reservoir, the tribunal assessing the compensation is not precluded from taking into consideration the special adaptability as an element of value by reason of the fact that the land could not be utilized for the construction of a reservoir *by other possible competitors unless statutory power for its compulsory purchase were first obtained ;* and further, that in determining the value arising from such special adaptability the tribunal should have regard to the contingent value arising from the possibility of the land coming into the market when required for the particular purpose, and not to the value of the realized possibility arising from the fact of the promoters having obtained statutory powers for the construction of the reservoir. This decision, however, still retains the necessity of establishing the possibility of the land coming into the market. The conclusion seems to be that land naturally adaptable to certain uses ceases to be so for the purposes of valuation, unless it is also so situated with reference to neighbouring towns that it is likely to come into the market.

The Additional Elements of full Value for the Purposes of Compensation.

The value, under the Housing of the Working Classes Act, 1890, section 21, is based upon the fair market value. That Act appears to go further than the Lands Clauses Acts, which do not include in market value, the amount which should be allowed for goodwill. It is conceived that the principle of compensation under the new Act is the same as in trespass, and that the owner is entitled to claim compensation for the damage he has sustained in being turned out of his

property, including therein the costs of removal, the loss of business profits and loss of fixtures. In the case of compulsory purchase, the arbitrator should take into account the damage due to severance (if so) of the land from other adjacent land of the same owner, and, generally, the value of the land to the owner himself, on the hypothesis that the owner is a possible purchaser.

It is submitted that the arbitrator would in all probability be guided by the Finance Act as to the meaning of market value, and would use the " total value " as found under that Act as the basis of compensation, adding thereto the various elements above noted.

Acquisition by Local Authorities of Land comprised in a Town Planning Scheme.

As to the incorporation of the provisions of the Lands Clauses Acts, in the case of compulsory purchase, see the note to subsection (1) of section 60.

Note to Subsection (4).

" MANNER OF PAYMENT."

An increase in value within the meaning of this section appears, as stated in the previous note, to be a " betterment " value, and therefore gives rise to a charge for improvements. The section, however, does not say that the charge is to fall upon the property by way of rentcharge, though it is probable that this manner of payment will be ordinarily adopted notwithstanding the next subsection. It may here be noted that where any increase is paid under this section, that increase will involve also an addition to the rateable value, but will be deducted from the increment value of the land for the purposes of the collection of increment value duty, and from the site value of the land for the purposes of the collection of undeveloped land duty [section 36, Finance Act (1909–10), 1910].

Whether the words inclosed in brackets " whether by instalments or otherwise " preclude the levy of a private improvement rate or the assessment of a rent charge is not clear. The alternative to " instalments " is not necessarily one lump sum.

Note to Subsection (5).

See the previous subsection and note thereto. In urban districts private improvement expenses may of course be recovered by the local authority under section 213 of the Public Health Act, 1875, by a rate on the premises called a private improvement rate of an amount sufficient to discharge such expenses together with interest not exceeding £5 per cent. per annum, and in such period not exceeding thirty years as the urban authority may in each case determine. The manner of collecting the increase is to be determined by the arbitrator failing a different arrangement between the parties. Whether the section authorizes a rate or a rentcharge is not clear, but such authorization would be consistent with the words " may be recovered as a civil debt."

Note to Subsection (6).

The necessity for this subsection seems to be only apparent, there being, it is conceived, no generic difference between " injurious affection " of property and expenditure incurred for the purpose of complying with a scheme. In other words, if this subsection were not included in the Act, the person who has incurred this expenditure would, it is submitted, still be entitled to get compensation on the ground that

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his property has been injuriously affected. It is true the phrase "injuriously affected" in the Lands Clauses Act, 1845, has been judicially interpreted to connote something done in relation to the land itself [but see note to subsection (1) supra]. It is also true that there may well be expenses incurred, as, e.g., the employment of a surveyor or valuer, for the purpose of complying with the scheme or ascertaining one's position in relation to it, which could only indirectly be regarded as an element in "injurious affection." But apart from the inherent difficulties in these clauses by reason of the absence of any definitions of "property" and "injurious affection," a further difficulty arises from the words in subsection (2) of section 59 infra, which appear to imply that certain things to be done *after the making or preparation of a scheme* for the purpose of complying with the provisions of the scheme, would, but for the subsection, have been rightly regarded as elements of injurious affection. Subsection (2) of section 59 is not, however, a defining section, though it might well have to be taken into account to help out the apparent omissions in the Act. The point, now under discussion, that seems to arise under subsection (6) of section 58 is not, however, a point of substance, except in so far as it purports to distinguish between elements of injurious affection and expenditure incurred to comply with the scheme, in such a way as to obscure or restrict the considerations that would otherwise have been taken into account in measuring the former. There would be no difficulty if compensation in this Act were confined to cases where property in section 54 (1) meant land *compulsorily acquired* for the purposes of a scheme. As there is nothing in the Act so restricting the meaning, the expression "injuriously affected" cannot be confined to the case where the property is compulsorily acquired. If the expression is to be taken to cover the case where the owner's building operations are controlled by the scheme, or where his undeveloped land is devoted to town planning purposes which he would not have himself contemplated, then arises the difficulty of finding out how the property is injuriously affected *immediately* after the application for authority to prepare a scheme and before anything has been done under it. The principle is clear, that the total value or market value is to be ascertained, but the manner of its ascertainment, apart altogether from the machinery of valuation provided by the Finance Act [alluded to in the notes to subsection (3) supra], is by no means obvious.

"REVOKED BY AN ORDER OF THE LOCAL GOVERNMENT BOARD."

See subsection (6) of section 54, which enables the responsible authority or "any other person appearing to them [the Board] to be interested" to apply to the Board to revoke or vary a scheme. It is submitted that the subsection now under consideration applies equally to variations as to revocations.

Exclusion or limitation of compensation in certain cases.

59.—(1) Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be paid in respect thereof if or so far as the provisions are such as would have been enforceable if they had been contained in byelaws made by the local authority.

(2) Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in the scheme or any part thereof, pre-

scribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for the purpose.

(3) Where a person is entitled to compensation under this Part of this Act in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and under that other enactment, and shall not be entitled to any greater compensation under this Act than he would be entitled to under the other enactment.

Note to Subsection (1).

The general principle as to the validity of byelaws is the same as in the case of any other law, provided they have not been held to be unreasonable, and therefore a district council cannot waive its byelaws. Cave, J., in *Baxter* v. *The Mayor and Corporation of Bedford*, Times Law Reports 424, said in the course of the arguments that the Corporation could not dispense with the law as laid down in their byelaws, as it was not for their benefit that the byelaws were passed, but for the benefit of the public. Power is given to the responsible authority under subsection (2) of section 55, to suspend byelaws so far as necessary for the proper carrying out of the scheme, and, presumably, to substitute in the scheme provisions in the nature of byelaws. The question whether any particular provision could have been contained in the byelaws is, it is submitted, only to be determined by reference to section 157 of the Public Health Act, 1875, and the Public Health Acts Amendment Act, 1890.

[Section 157 of the Public Health Act enables every urban authority to make byelaws with respect to :—

(1) The level width and construction of new streets, and the provisions for the sewerage thereof.
(2) The structure of walls, foundations, roofs and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health.
(3) The sufficiency of the space about buildings to secure a free circulation of air.
(4) The ventilation of buildings.
(5) The drainage of buildings.
(6) Water-closets, earth closets, privies, ashpits and cesspools in connexion with buildings.
(7) The closing of buildings or parts of buildings unfit for human habitation, and to the prohibition of their use for such habitation.

Further, they may make provision " for the observance of such bye-
" laws by enacting therein such provisions as they think necessary as
" to the giving of notices, as to the deposit of plans and sections by
" persons intending to lay out streets or to construct buildings, as to
" inspection by the urban authority, and as to the power of such

SECTION 59. " authority (subject to the provisions of this Act) to remove, alter or " pull down any work begun or done in contravention of such bye-" laws."

This enactment is applied to rural authorities by section 276 of the Public Health Act, which enables the Local Government Board to make an order conferring upon rural district councils the power to make byelaws under section 157.

See also note to section 55 (2) sub nom. " suspending . . . byelaws," vi., pp. 119 et seq.

The Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, s. 23), extends section 157 of the Public Health Act, so as to enable urban authorities, that have adopted Part III. of that Act or rural authorities authorized so to do by the Local Government Board, to make byelaws with respect to—

(*a*) Keeping water-closets supplied with sufficient water for flushing.
(*b*) The structure of floors, hearths and staircases.
(*c*) The height of rooms intended to be used for human habitation.
(*d*) The paving of yards and open spaces in connexion with dwelling houses.
(*e*) The provision in connexion with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse.

Any byelaws under section 157 as extended by section 23 of the Act of 1890 with regard to the drainage of buildings, and to water-closets, earth-closets, privies, ashpits and cesspools, in connexion with buildings, and the keeping water-closets supplied with sufficient water for flushing may be made so as to affect buildings erected in urban districts at any time before or after the Public Health Acts.

As to the powers of rural authorities under the Public Health Acts Amendment Act, 1890, see notes to section 55 (2), pp. 119, 120.

Note to Subsection (2).

This subsection must not be looked upon as in any way limiting the nature of the provisions that may be inserted in a town planning scheme or confining those provisions to the matters therein specifically mentioned. The subsection is not a defining section as to the objects or contents of a scheme; it does no more than exclude compensation in a number of cases over and above those implied in subsection (1) of the above section.

" INJURIOUSLY AFFECTED."

Reference has already been made at considerable length in the notes to subsections (1) and (6) of section 58 to the meaning to be attached to the expression " injuriously affected," as used in this Act. The conclusion arrived at was that the principles of the decisions upon section 68 of the Lands Clauses Act, 1845, could hardly apply. Mention was also made of sections 15 and 23 of the London Building Act, and section 157 of the Public Health Act, as affording some assistance. Subsections (1) and (2) of section 59 of this Act seem to point to these latter sections or sections cognate thereto, e.g., section 41 of the London Building Act, 1894, as affording some test of the meaning of " injuriously affected." In this context it seems material to refer to section 308 of the Public Health Act, 1875: " Where any person sustains any damage by reason of the exercise of any powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to

such person by the local authority exercising such powers." The principles of these various enactments have been retained in the new Act. For no one could claim compensation under the Public Health Act by reason merely of anything contained in the byelaws as to buildings, or under the London Building Act, by reason of the provisions therein contained as to the sufficiency of space about buildings, or the height of buildings. It is only in exceptional cases under the London Building Act that compensation can be claimed (e.g., section 15). Under the Public Health Acts, apart from the byelaws, the principle upon which compensation can be obtained is contained in the above cited section of that Act. The words "in relation . . . default" need not be pressed; they have not, it is believed, been judicially interpreted, or, if at all, in no way to modify the principle held by Wills, J., in *Cessford* v. *Dover Harbour Board, Times*, April 2, 1898, to be well settled law that to bring a case within the doctrine of compensation as distinguished from action, three things must concur: (1) the Act must be a lawful exercise of statutory powers; (2) the damage must be such as would be actionable but for the Act of Parliament, and (3) the damage must arise from the execution of the works, and not merely from the use of them after they had been constructed. This last mentioned condition is similar to that cited from Jepson's *Lands Clauses Acts* in the note to section 58 (1) supra, and it was there pointed out, that the condition could hardly apply to this Act, by reason of the difficulty caused by the words "by the making of a scheme" in that subsection. The principle itself is clear enough, and presumably, in attempting to estimate the sum to be awarded, the arbitrator would be bound to take into consideration future as well as present damage. Cf. *Uttley* v. *Todmorden Local Board*, 1874, 44 L.J.C.P. 19, where these matters were held to be proper subjects for consideration of an umpire in determining the amount of compensation to be paid to the owner of land through which a local board had carried a sewer, viz., the difficulty which the owner might experience in obtaining the consent of the local board under section 26 to the erection of buildings over the sewer, the possibility of a refusal lessening the value of the adjoining land, the defective manner in which the sewer was constructed, and the fact that stenches might occasionally arise (Glen, *Law of Public Health*, p. 917). But the difficulty is to apply this principle without straining the words "by the making of a town planning scheme" so as to make them comprise the things or works actually done or executed under the scheme. See also notes to section 58 (1) (6).

No doubt the distinction here drawn between "making a scheme" and the works or things that are executed under it, considered as causes of compensation, seems a hypercritical one. The phrases can hardly be synonymous for the purposes of compensation, because a person may receive compensation even when the scheme goes off [as distinct from compensation for things done to comply with the scheme, section 58 (6)]. But even if it is assumed that what is intended is the consideration of the effect on the market value of the land of what can be done under the scheme if it receives the approval of the Board, it is extremely difficult fairly to assess the value in such a way as to give effect to all the elements of damage that might arise after the application, and before approval, for the scheme can be altered or varied up to the time of final approval. The Board's circular construes the words in section 58 (1) to mean that the values must be taken "immediately prior to" and "immediately after" the making of the scheme. This construction, however, is not warranted by any words in the Act, and would only increase the difficulties as to valuation here alluded to.

SECTION 59. "AMENITY." See notes to section 54 (1).

As to the practicability of including in a town planning scheme provisions restricting the use of certain areas of land to specified purposes, e.g., open spaces, see notes to section 54 (1) as to the effect of this subsection taken together with 54 (1) 55, and Schedule IV.

"THE SPACE ABOUT BUILDINGS." See note to section 54 (1).

The expression "open spaces about buildings" is to be found in Part V. of the London Building Act, 1894 (57 & 58 Vict. c. ccxiii). Section 41 of that Part of that Act enacts that "there shall be provided in the rear of every such building [i.e., "domestic buildings"] an open space exclusively belonging to such building, and of an aggregate extent of not less than one hundred and fifty square feet. Section 42 of that Act provides for open spaces about dwellings for working classes not on the public way.

This Act applies to the administrative county of London (see section 66). As regards London, therefore, the sections of the London Building Act, 1894, above alluded to, would have prevented provisions in schemes prescribing open spaces about buildings from being considered as "injuriously affecting" the property. The London Building Act, however, does not permit of public open spaces; and, moreover, it prescribes a minimum area for spaces at the rear, which minimum might be regarded by town planners as insufficient for their purposes.

"LIMIT THE NUMBER OF BUILDINGS."

It has already been pointed out that one of the essentials of town planning is the limitation of the number of buildings that can be erected to the acre. See notes to section 55 (1), (2), 56, and also Schedule V., pp. 104 et seq. and 190.

Under the existing model byelaws there is no positive limitation of the number, but the effect of them is to allow of the erection of as many as fifty-six to the acre, whereas, according to the views of most housing reformers, considerations of hygiene, to say nothing of amenity, allow of a maximum of only sixteen, or even less.

"HEIGHT OR CHARACTER OF BUILDINGS."

Cf. sections 47–52 of the London Building Act, 1894, as to the height of buildings. Under section 47 of that Act, a building (not being a church or chapel) shall not be erected of or be subsequently increased to a greater height than 80 feet (exclusive of two storeys in the roof and of ornamental towers, turrets, or other architectural features or decorations) without the consent of the council. The powers in regard to town planning have no limitations of the nature of those in the sections of the London Building Act above referred to, and, generally speaking, this Act must be regarded as being far more than a mere first step in the universal extension of the London Building Act, 1894, to every local authority in the United Kingdom. In this subsection, the words "with a view to securing the amenity of the area included" would alone go to establish this proposition.

The expression "character" in regard to buildings is apparently new. The word may cause considerable difficulty of a kind cognate with that arising on the whole of Part II. of this Act, as to ascertaining exactly what may and what may not be accomplished by a scheme. If "character" meant "class" or "kind," the London Building Act, 1894, might be suggested as affording a nomenclature, viz., public buildings, domestic buildings, dwelling houses, new buildings, old buildings, iron buildings, wooden structures, warehouse class buildings, uniting buildings, temporary structures, corner buildings and special

buildings. If this were what is meant by "character" the analogy could be taken further so as to limit the scope of the provisions of a scheme to matters pertaining to construction, position as to streets, sleeping accommodation, height, proximity to dangerous or noxious business and so forth. But this subsection seems to indicate that the responsible authority can go further than the local authorities contemplated by the London Building Act, though some of the matters above referred to would undoubtedly have relation to considerations of amenity, even though that word is also new. The subsection, taken with sections 54 and 55, seems rather to point to a power to restrict certain parts of the area included in the scheme to buildings of a particular class or kind, with a view to the correlation of all the parts of a town or a town extension along the projected lines of an ideal town planning scheme. In any case section 55 seems to give all the powers that the London Building Act confers on authorities included in that Act. SECTION 60.

"WHICH THE LOCAL GOVERNMENT BOARD . . . CONSIDER REASONABLE."

The Board point out that cases may arise in which the local authority may desire to insert provisions in their scheme in reference to injurious affection which the Board, having regard to this subsection, might consider unreasonable; but if the local authority were willing to pay compensation in respect of such provisions they could do so, and there would consequently be no difficulty in inserting such provisions in the scheme.

Note to Subsection (3).

The words "any other enactment" would include the various enactments mentioned in the note to subsection (2) of this section, and also in the note to subsection (1) of section 58.

An attempt has been made in the notes to section 58 (1), (6) and 59 (2) to explain the meaning of "injuriously affected" as used in this Act. The present is in no way a defining subsection, and therefore cannot be invoked to get rid of the difficulties alluded to in the above notes. If an owner sustains loss both under this enactment and, say, the Housing of the Working Classes Act, 1890, the measure of compensation of the latter Act is to be the criterion. But that is not to say that the principles upon which compensation is to be given under such other enactment are the governing principles in this Act or that such other enactment in any way supplies the exact meaning of "injuriously affected."

A person, indeed, could hardly be entitled to compensation conveniently under two enactments for anything purporting to be done under a town planning scheme, and the subsection probably merely contemplates the possibility of land being compulsorily purchased or otherwise affected in connexion with an improvement scheme under the Housing of the Working Classes Act, 1890, so as to give ground to a claim for compensation, and then subsequently becoming included in a town planning scheme, embodying or extending or otherwise disposing of the earlier improvement scheme.

60.—(1) The responsible authority may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be authorized to purchase any such land compulsorily in the same manner and subject to the

Acquisition by local authorities of land comprised in a scheme.

SECTION 60.

same provisions (including any provision authorizing the Local Government Board to give directions as to the payment and application of any purchase money or compensation) as a local authority may purchase or be authorized to purchase land situate in an urban district for the purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by sections two and forty-five of this Act.

(2) Where land included within the area of a local authority is comprised in a town planning scheme, and the local authority are not the responsible authority, the local authority may purchase or be authorized to purchase that land in the same manner as the responsible authority.

Note to Subsection (1).

See note to section 2 of this Act. Under the provisions of the Housing Acts thus made applicable, the local authority can acquire land compulsorily by means of an order submitted to the Local Government Board, and dealt with by the latter body in accordance with those provisions of Schedule I. of this Act which relate to the compulsory acquisition of land situate in urban districts (Schedule I. 7).

Schedule I. 4 provides that the order submitted to the Board putting in force the provisions of the Lands Clauses Acts shall "incorporate subject to the necessary adaptations, the Lands Clauses Acts (except section 127 of the Lands Clauses Consolidation Act, 1845) and sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board. . . ."

It has been pointed out in considerable detail in the notes to section 58 (1), (2), (3), (6) and section 59 (1), (2) that the provisions as to "injurious affection" contained in the Lands Clauses Act, 1845, and the principles of the decisions on that Act cannot well apply to those sections; but in the case of compulsory acquisition of land as distinct from the mere control of building operations by a town planning scheme, the Lands Clauses Acts do apply, and therefore also section 68 of the Lands Clauses Act [see note to section 58 (1)] and the decisions thereon are applicable to the above section (60), with any necessary adaptations. Section 127 of the Lands Clauses Act providing for the sale within a prescribed period or within ten years from the time limited by the special Act for the completion of works, of superfluous lands, and in default of sale, for the vesting thereof in adjoining owners, does not apply to this Act.

The effect of the incorporation of sections 77 to 85 of the Railways Clauses Act is this: that the responsible authority will not be entitled to any minerals under land purchased by them, unless the same shall have been expressly purchased by them. But they are entitled to such minerals, even without express conveyance, as are necessary to be dug, carried away, or used in the construction of town planning works upon the land. The owner of mines under land purchased for the purposes of a scheme may therefore work them, unless the responsible authority be willing to make him compensation for them. Any improper working of the mines by the owner so as to cause damage or obstruction to the works incidental to the town planning scheme must be made good

by the owner. Airways, headways, gateways, water levels or other mining communications between mines lying under land included in a scheme, or under land within the prescribed distance of land included in a scheme, may be constructed by the owners to enable them to ventilate, drain and work their mines, if the working of any such mines be prevented by reason of apprehended injury to the town planning works; but these communications are not to be of greater dimensions or section than the prescribed dimensions and sections. The responsible authority must make compensation for injury done to mines, i.e., must pay all such additional expenses and losses as shall be incurred by the owner, lessee or occupier by reason of any severance of the lands under which the mines lie, or by reason of the continuous working of the mines being interrupted, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the town planning works, and also for minerals not purchased by the responsible authority which cannot be obtained by reason of the working or maintaining of town planning works. The responsible authority are also to make compensation to the owner or occupier of the surface lands or lands lying over mines (not being the owner or occupier of the mines) for damage caused by any airway or other work made necessary by the town planning works. (This provision probably can only relate to surface owners of lands not included in the scheme but situate near, and affected by, land included in the scheme.) The responsible authority may enter and inspect the working of the mines, the owner or occupier being under a penalty for refusal. If mines are improperly worked, the responsible authority may require means to be adopted for the safety of the works incidental to the scheme.

"PAYMENT AND APPLICATION OF PURCHASE MONEY." See Part I. of this Act, section 5 and note thereto.

In dealing with land purchased the responsible authority should refer to such of the general provisions as relate to "dealing with or disposal of land, etc." These will probably expressly empower the authority to lay out recreation grounds, parks, and streets, or execute such works as it is the duty of some person to execute under the scheme. None, however, have yet been issued by the Board [see section 55 (1) and note].

Note to Subsection (2).

See section 55 (3) and notes thereto.

Powers of Local Government Board in case of default of local authority to make or execute town planning scheme.

61.—(1) If the Local Government Board are satisfied on any representation, after holding a public local inquiry, that a local authority—

(*a*) have failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a town planning scheme ought to be made; or

(*b*) have failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted; or

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(*c*) have unreasonably refused to consent to any modifications or conditions imposed by the Board;

the Board may, as the case requires, order the local authority to prepare and submit for the approval of the Board such a town planning scheme, or to adopt the scheme, or to consent to the modifications or conditions so inserted:

Provided that, where the representation is that a local authority have failed to adopt a scheme, the Local Government Board, in lieu of making such an order as aforesaid, may approve the proposed scheme, subject to such modifications or conditions, if any, as the Board think fit, and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the Board.

(2) If the Local Government Board are satisfied on any representation, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed, or any provisions thereof, or to execute any works which under the scheme or this Part of this Act the authority is required to execute, the Board may order that authority to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, or for executing any works which under the scheme or this Part of this Act the authority is required to execute.

(3) Any order under this section may be enforced by mandamus.

Note to Subsection (1).

"PUBLIC LOCAL INQUIRY."

See section 63 and section 56 (1) as to the initiation of a scheme, and the procedure to be adopted at the preliminary stage.

"HAVE FAILED TO TAKE THE REQUISITE STEPS FOR HAVING A SATISFACTORY SCHEME PREPARED."

From the notes just previously referred to, it will be seen that there is no very satisfactory provision or procedure for the initiation of a scheme. Section 54 (1) purports to lay down certain conditions under which a scheme may be prepared, but it is nowhere stated in the Act exactly when developing land *ought* to be the subject of a scheme. Strictly, all developing land should be included in a scheme, with the progressive object of securing some measure of control over unchecked building operations, and for ensuring that individual owners shall not build or otherwise develop their land without regard to the operations of neighbouring owners.

It is not stated in the Act, either in regulations framed under section

56 or " general provisions " in pursuance of section 55 (1), how a local inquiry may be demanded. If the local authority make no move, it is not clear that section 85 of the principal Act or any applied sections of the Public Health Act, 1895, give any power to householders, by analogy to section 31 of the principal Act, to make a complaint or representation as to the necessity for a scheme. Presumably the genesis of a scheme is a matter peculiarly for the local authority stimulated by local opinion, in the absence, that is to say, of owners coming forward with a scheme for adoption.

The greater part of this subsection, and the whole of the next subsection relate rather to matters subsequent to the application for authority to prepare or adopt a scheme being granted. All the " requisite steps " will be found set out in the Regulations.

" MODIFICATIONS OR CONDITIONS IMPOSED BY THE BOARD."

See section 54 (4) and the Regulations, Articles XXIV. and XXV.

Note to Subsection (2).

" ENFORCE . . . THE OBSERVANCE OF A SCHEME, ETC."

See section 57, as to power to enforce schemes or execute works incidental thereto. The word " confirmed " does not occur elsewhere in this Part of this Act and evidently means " approved." If so, the draughtsmanship is somewhat inexcusable in view of the technical meaning attached to " confirmed " in the Housing Acts, where it connotes the fiat of the Houses of Parliament. It will have been observed from the notes to section 56 (1) and 57 supra, that the regulations do not include any provisions " in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof " [section 56 (1)] or as to " inquiries and reports as to the beginning and progress and completion of works, and other action under the scheme " [Schedule V., 3 (*b*)]. The present subsection, however, supplies the machinery of representation, presumably by householders, and a local inquiry.

Note to Subsection (3).

See similar provisions in section 10 and 11 of the first Part of this Act. The procedure would be to move, in the Divisional Court, for a rule nisi calling on the local authority to show cause against doing the things required by the order.

Determination of matters by Local Government Board.

62. Where the Local Government Board are authorized by this Part of this Act or any scheme made thereunder to determine any matter, it shall, except as otherwise expressly provided by this Part of this Act, be at their option to determine the matter as arbitrators or otherwise, and, if they elect or are required to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of the matters aforesaid.

SECTION 62.

Note.

Under the provisions of the Regulation of Railways Act, 1868, and Amending Enactments, respecting arbitrations by the Board of Trade, the Local Government Board can appoint an arbitrator to act for them, which course will, they intimate, be usually adopted by them as regards cases arising under section 57 of this Act, as to buildings or works contravening a planning scheme.

The provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, are contained in sections 30 to 33 of 31 & 32 Vict. c. 119.

Section 30: "Whenever the Board of Trade are required to make any "award or to decide any Difference in any Case in which a Company "is one of the Parties, they may appoint an Arbitrator to act for them, "and his Award or Decision shall be deemed to be the Award or Decision "of the Board of Trade.

"If the Arbitrator dies, or in the Judgment of the Board of Trade "becomes incapable or unfit, the Board of Trade may appoint another "Arbitrator.

Section 31: "The Board of Trade may fix the Remuneration "of any Arbitrator or Umpire appointed by them in pursuance "of this or any other Act in any case where a company is one of the "Parties, and may if they think fit, frame a Scale of Remuneration for "Arbitrators or Umpires so appointed by them, and no Arbitrator "or Umpire so appointed by them shall be entitled to any larger "Remuneration than the Amount fixed by the Board of Trade."

Section 32: "The provisions of sections 18 to 29, both inclusive, "of the Railway Companies Arbitration Act, 1859, shall, so far as "is consistent with the Tenor thereof, apply to any Arbitrator "appointed by the Board of Trade, and to his Arbitration and Award, "notwithstanding that one of the Parties between whom he is ap- "pointed to arbitrate may not be a Railway Company, and in con- "struing those sections for the purpose of this Act the Word 'Com- "panies' shall be construed to mean the Parties to the Arbitration."

Section 33 is repealed. The effect of sections 18 to 29 of the Railway Companies Arbitration Act, 1859, is as follows: the arbitrator may call for the production of any documents or evidence in the possession of the Parties and may administer oaths. The procedure in the arbitration is in the discretion of the arbitrator, except where the parties agree otherwise. The arbitration may proceed in the absence of the parties if the arbitrator think fit. The arbitrator may make several awards, if he think fit, each on part of the matters referred, instead of one award on all the matters referred. Awards made in due time are to be binding on the parties, but the arbitrator has power to extend the period for making his award. No award made on any arbitration shall be set aside for informality. Except so far as the parties bound by any award from time to time agree, all things required under it to be done or omitted shall be done or omitted accordingly. Agreements, arbitrations and awards are effectual in all superior courts of law and equity in the United Kingdom, and can be enforced. Costs of the arbitration, except where the parties otherwise agree, are to be in the discretion of the arbitrator, and, where not otherwise awarded, are to be paid by the parties equally. The submission to arbitration may at any time be made a rule of Court.

"EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY THIS PART OF THIS ACT."

See section 57 (3), under which the Board may, as arbitrators, decide whether any building or work contravenes a scheme, or whether

any provision of a scheme is not complied with in the erection or carrying out of any such building or scheme, *unless the parties otherwise agree.* Similarly, as to any question whether any property is injuriously affected or increased in value within the meaning of section 58, subsection (4) of section 58 provides for determination by the Board *unless the parties agree on some other method of determination.* In every other case where the Board are authorized to determine any matter under this Part of this Act their decision is by order.

Inquiries by Local Government Board.

63. Section eighty-five of the Housing of the Working Classes Act, 1890 (which relates to inquiries by the Local Government Board), as amended by this Act, shall apply for any purposes of this Part of this Act as it applies for the purpose of the execution of the powers and duties of the Local Government Board under that Act.

Note.

See section 56 (1) as to inquiries in connexion with the preparation or adoption or the approval of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the provisions of the scheme. See also notes to that subsection at pp. 130 and 134. See also section 61 as to inquiries in connexion with the powers of the Board in case of default of local authority to make or execute a town planning scheme.

Section 85 of the principal Act as amended, enacts: (1) "For the purposes of the execution of their powers and duties under this Act the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board or confirming authority engaged in the inquiry [not exceeding three guineas a day] shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board or confirming authority may direct, and that board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt due to the Crown from such local authority or person."

(2) "Sections 293 to 296 and 298 of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board or any local inquiry which that Board may cause to be held in pursuance of any part of this Act."

The restriction that the fee of the inspector, officer, or other person holding the inquiry shall not exceed three guineas a day, is repealed.

The words "any other confirming authority" have no application to this Part of this Act.

Section 293 of the Public Health Act, 1875, empowers the Local Government Board from time to time to cause to be made such inquiries as are directed by that Act, and such inquiries as they see fit in relation to the public health in any place, or any matters with respect to which their sanction, approval or consent is required by that Act. How far this section of the Public Health Act is necessary, in view of the powers given by section 85 of the principal Act, is not clear.

Section 294 enables the Board to make orders as to the costs of inquiries or proceedings instituted by, or of appeals to them under that

SECTION 63. Act, and as to the parties by whom or the rates out of which such costs shall be borne; and provides that every such order may be made a rule of one of the superior courts of law on the application of any person named therein. Presumably if the costs are not fixed under this section, they may be taxed in the usual way. Again, it must be submitted that this section also appears to give no wider powers than section 85 of the principal Act. Section 295 declares that all orders made by the Local Government Board in pursuance of that Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as the Board may direct. Section 296 provides that Inspectors of the Local Government Board shall for the purposes of any inquiry directed by the Board have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts. [As to the powers of poor law inspectors, 4 & 5 Will. IV. c. 76, s. 12, and 10 & 11 Vict., c. 109, ss. 20, 21, provide "that the said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the Commissioners [i.e., now the Local Government Board], or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in any wise relating to such matter, and not relating to or involving any question of title to any lands, tenements or hereditaments not being the property of any parish or union. The Board [i.e. in place of the Commissioners] may examine any person so summoned by them, or who may voluntarily come before them to be examined, upon oath, and every inspector may administer an oath, or require the party examined to make and subscribe a declaration of the truth of the matter in regard to which he shall have been or shall be examined. All summonses made by any inspector for any such purposes as aforesaid shall be obeyed as if such summons had been the summonses and orders of the Local Government Board, and the non-observance thereof shall be punishable similarly. The costs and expenses of such person so summoned shall be paid in such cases, and in such manner as the costs and expenses of persons summoned under the authority of the 4 & 5 Will. IV. c. 76, s. 14, are now payable (i.e., out of the poor rates). No person shall be required in obedience to such summons to travel more than ten miles from his place of abode. Persons who wilfully give false evidence before the inspectors are punishable as for perjury; and persons refusing to give evidence or to attend, or altering, suppressing, destroying or refusing to produce any books, contracts, agreements, accounts, maps, plans, surveys, valuations or copies of the same, which may be required to be produced, to any person authorized to require the production of the same, shall be deemed guilty of a misdemeanour.]

Section 298 provides that the reasonable costs of any local authority in respect of provisional orders made in pursuance of that Act and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for the purposes of that Act by the local authority interested in or affected by such provisional orders, and that such costs shall be paid accordingly; and that if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

64. All general provisions made under this Part of this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893, shall apply to such provisions as if they were statutory rules within the meaning of section one of that Act.

SECTION 64. Laying general provisions before Parliament.

Note.

See notes to section 55 and Schedule IV.

Section 1 of 56 & 57 Vict. c. 66 (Rules Publication Act, 1893) provides as follows. Subsection (1): "At least 40 days before making any "statutory rules to which this section applies, notice of the proposal "to make the rules, and of the place where copies of the draft rules "may be obtained, shall be published in the *London Gazette*."

Subsection 2: "During those 40 days any public body may obtain "copies of such draft rules on payment of not exceeding threepence "per folio, and any representations or suggestions made in writing "by a public body interested to the authority proposing to make the "rules shall be taken into consideration by that authority before "finally settling the rules; and on the expiration of those 40 days "the rules may be made by the rule making authority, either as "originally drawn or as amended by such authority and shall come "into operation forthwith or at such time as may be prescribed in "the rules."

Subsection 3: "Any enactment which provides that any statutory "rules . . . shall not come into operation for a specified period after "they are made is hereby repealed, but this repeal shall not affect "section 37 of the Interpretation Act, 1889."

[Section 37 Interpretation Act, 1889: "Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rules, regulations or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation."]

Subsection (4): "The statutory rules to which this section applies "... do not include any statutory rules if the same or a draft thereof "are required to be laid before Parliament for any period before the "rules come into operation, nor do they include rules made by the "Local Government Board for England. . . ."

The above words are therefore repealed by section 64 in so far as they apply to general provisions under section 55 of this Act.

Subsection (5): "This section shall not apply to Scotland." See subsection (7) of section 67.

Section 2 of the Rules Publication Act, 1893, provides that: "Where "a rule making authority certifies that on account of urgency or any "special reason any rules should come into immediate operation, it "shall be lawful for such authority to make any such rules to come "into operation forthwith as provisional rules, but such provisional "rules shall only continue in force until rules have been made in accord-"ance with the foregoing provisions of this Act."

SECTION 65. Definition of local authority, and expenses

65.—(1) For the purposes of this Part of this Act the expression "local authority" means the council of any borough or urban or rural district.

(2) Any expenses incurred by a local authority under this Part of this Act, or any scheme made thereunder, shall be defrayed as expenses of the authority under the Public Health Acts, and the authority may borrow, for the purposes of this Part of this Act, or any scheme made thereunder, in the same manner and subject to the same provisions as they may borrow for the purposes of the Public Health Acts.

(3) Money borrowed for the purposes of this Part of this Act, or any scheme made thereunder, shall not be reckoned as part of the debt of a borough or urban district for the purposes of the limitation on borrowing under subsections (2) and (3) of section two hundred and thirty-four of the Public Health Act, 1875.

Note to Subsection (1).

Metropolitan borough councils are not, it seems, directly concerned n this part of the Act [see section 66 (1)].

Note to Subsection (2).

The provisions as to expenses of urban authorities will be found in section 207 to 228 of the Public Health Act (see Glen's *Public Health* and cases there collected). The provisions as to borrowing powers of urban districts are to be found in sections 233 to 243 of the Public Health Act (see Glen's *Public Health*). In every case the consent of the Board is necessary, but whereas under section 234 (2) of the Public Health Act the limit of borrowing may not exceed at any time the assessable value for two years of the premises assessable within the particular district in respect of which the money may be borrowed, money borrowed for the purposes of Part II. of this Act is not to be reckoned as part of the debt of the urban or borough district for the purposes of such limitation [see subsection (3) infra].

The provisions as to expenses of rural authorities will be found in sections 229 to 232 of the Public Health Act, and those as to borrowing powers in sections 233 to 243 of that Act. The sums borrowed will be on the security of the local rate.

Under this enactment any expenses incurred by a local authority in preparing a case on which to base an application to the Local Government Board for authority to make a town planning scheme may be defrayed as general expenses under the Public Health Acts, even though the scheme is not sanctioned.

Note to Subsection (3).

See note to subsection (2). Apparently there is no provision for any limitation on the amount borrowed, but the consent of the Board is necessary in every case.

66.—(1) This Part of this Act shall apply to the administrative county of London, and, as respects that county, the London County Council shall be the local authority.

Application to London.

(2) Any expenses incurred by the London County Council shall be defrayed out of the general county rate and any money may be borrowed by the Council in the same manner as money may be borrowed for general county purposes.

Note to Subsection (1).

Metropolitan borough councils do not appear to be directly concerned in this part of the new Act and the London County Council is the local authority for the districts under their control as regards the purposes of Part II.

67. This Part of this Act shall apply to Scotland subject to the following modifications :—

Application of Part II. to Scotland.

(1) The Local Government Board for Scotland (herein-after referred to as the Board) shall be substituted for the Local Government Board, and shall for the purposes of this Part of this Act have the same powers of local inquiry as for the purposes of the Housing Acts as defined in Part I. of this Act.

(2) Subsection (1) and subsection (3) of the section of this Part of this Act which relates to the definition of local authority and expenses shall not apply.

(3) The local authority and the area of such authority for the purposes of this Part of this Act shall respectively be the local authority for the purposes of the Housing Acts as defined in Part I. of this Act, and the district of that authority.

(4) References to the Public Health Acts shall be construed as references to the Housing Acts as defined in Part I. of this Act.

(5) Any local rate for the purposes of this Part of this Act (including the purposes of any loan) shall not be reckoned in any calculation as to the statutory limit of the public health general assessment.

SECTION 68.

(6) The Board shall not themselves make an order under section sixty-one of this Act on any Authority, but in lieu thereof it shall be lawful for the Board, after holding a local inquiry at which the authority shall have had an opportunity of being heard, and with the approval of the Lord Advocate, to apply for such an order by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorized and directed to do therein and to dispose of the expenses of the proceedings as to the said Division or Lord Ordinary shall appear to be just.

(7) In any proceedings under this Part of this Act the Board shall have regard to the powers and jurisdiction of the dean of guild court in burghs.

(8) The provision respecting the Rules Publication Act, 1893, shall have effect as if section one of that Act applied to Scotland, with the substitution of the *Edinburgh Gazette* for the *London Gazette*.

Note.

See note to section 64.

PART III.

County Medical Officers, County Public Health and Housing Committee, etc.

Appointment, duties, and tenure of office of county medical officers.

68.—(1) Every county council shall appoint a medical officer of health under section seventeen of the Local Government Act, 1888.

(2) The duties of a medical officer of health of a county shall be such duties as may be prescribed by general order of the Local Government Board and such other duties as may be assigned to him by the county council.

(3) The power of county councils and district councils under the said section to make arrangements with respect to medical officers of health shall cease, without prejudice to any arrangement made previously to the date of the passing of this Act.

(4) The medical officer of health of a county shall, for the purposes of his duties, have the same powers of entry on premises as are conferred on a medical officer of health of a district by or under any enactment.

(5) A medical officer of health of a county shall be removable by the county council with the consent of the Local Government Board and not otherwise.

(6) A medical officer of health of a county shall not be appointed for a limited period only:

Provided that the county council may, with the sanction of the Local Government Board, make any temporary arrangement for the performance of all or any of the duties of the medical officer of health of the county, and any person appointed by virtue of any such arrangement to perform those duties or any of them shall, subject to the terms of his appointment, have all the powers, duties, and liabilities of the medical officer of health of the county.

(7) A medical officer of health appointed after the passing of this Act under the said section as amended by this section shall not engage in private practice, and shall not hold any other public appointment without the express written consent of the Local Government Board.

(8) An order under this section prescribing the duties of medical officers of health of a county shall be communicated to the county council and shall be laid before Parliament as soon as may be after it is made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after the order is laid before it praying that the order may be annulled, His Majesty in Council may annul the order and it shall thenceforward be void, but without prejudice to the validity of anything previously done thereunder.

Note to Subsection (1).

Section 17 (2–3) of the Local Government Act, 1888, empowered either an urban or rural district council, instead of appointing a separate medical officer under sections 189 and 190 of the Public Health Act, 1875, to come to an arrangement with the county council, whereby such district council might utilize the services of the medical officer or officers of health appointed by the county council (i.e., where the county council thought fit to make the appointment), under subsection (1) of section 17 of the Act of 1888. The new Act amends section 17 in two particulars: (1) it is no longer merely optional,

SECTION 68. but obligatory on the county council to appoint a medical officer of health; (2) arrangements between county and district councils can no longer be made [see subsection (3) infra]. Henceforth, it will be obligatory on district councils to appoint officers under the above cited sections of the Public Health Act, 1875.

Note to Subsection (2).

The general order which may be cited as the County Medical Officers of Health (Duties) Order, 1910, prescribes the following duties as the duties of every medical officer of health of a county other than the administrative county of London (as to which see section 70 infra) :—

(1) The medical officer of health of the county shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health in the county. For this purpose he shall visit the several county districts in the county as occasion may require, giving to the medical officer of health of each county district prior notice of his visit, so far as this may be practicable.

(2) The medical officer of health of the county shall from time to time inquire into and report upon the hospital accommodation available for the isolation of cases occurring in the county—
(*a*) of small-pox, and
(*b*) of other infectious diseases,
and upon any need for the provision of further hospital accommodation.

(3) The medical officer of health of the county shall communicate to the medical officer of health of a county district within the county any information which he may possess as to any danger to health threatening that district.

(4) The medical officer of health of the county shall consult with the medical officers of health of county districts within the county whenever the circumstances may render this desirable.

(5) If the annual or special reports of the medical officer of health of a county district in the county shall not contain adequate information in regard to—
(*a*) the vital statistics of the district,
(*b*) the sanitary circumstances and administration of the district, and
(*c*) the action taken in the district for putting in force the provisions of the Housing of the Working Classes Acts, 1890 to 1909,
the medical officer of health of the county shall obtain from the medical officer of health of the county district such further information on those matters as the circumstances may demand.

(6) The medical officer of health of the county shall, when directed by us, or by the county council, or as occasion may require, make a special report to the county council on any matter appertaining to his duties under this order.

(7) The medical officer of health of the county shall as soon as practicable after the 31st day of December in each year make an annual report to the county council up to the end of December on the sanitary circumstances, the sanitary administration and the vital statistics of the county.
In addition to any other matters upon which the medical

officer of health may consider it desirable to report, his annual report shall contain the following sections :— SECTION 68.

(*a*) A digest of all annual and special reports made by the medical officers of health of all county districts within the county ;

(*b*) a section as to the isolation hospital accommodation available for each county district and as to the steps which should be taken to remedy any deficiencies which may exist ;

(*c*) a section on the administration of the Housing of the Working Classes Acts, 1890 to 1909, within the county ;

(*d*) a section on the water supply of the several county districts within the county ;

(*e*) a section on the pollution of streams within the county and as to the steps for the prevention of pollution taken :—

(i) by the local authorities, and

(ii) by the county council ;

(*f*) a section on the administration within the county of the Midwives Act, 1902 ; and

(*g*) a section on the administration of the Sale of Food and Drugs Acts, 1875 to 1907, within that part of the county in which the county council have jurisdiction for the purposes of those Acts.

(8) The medical officer of health of the county shall send to us two copies of his annual report and two copies of any special report ; he shall also send one copy of his annual report to the council of every county district in the county and shall send three copies of any special report to the council of every such county district affected by the special report.

SALE OF FOOD AND DRUGS.

It will be seen that paragraph (*g*) of section (7) of the above order includes in the scope of the medical officer's duties, such a matter as the administration of the Sale of Food and Drugs Acts. The Board have previously intimated that the expression " public health " in section 71 (1) infra may, in their opinion, include the administration of those Acts. There can be but little doubt the interpretation is justified. The Public Health Acts embody numerous provisions as to the sale and importation of unwholesome food [Public Health Act, 1875, sections 116 to 119, and the Public Health (Regulations as to Food) Act, 1907], and moreover section 13 of Sale of Food and Drugs Act, 1875, empowers any medical officer of health " under the direction and at the cost of the local authority appointing such officer . . . or charged with the execution " of the Act, to procure any sample of food or drugs for submission to the public analyst.

SCHOOL MEDICAL OFFICER.

As regards the work of a school medical officer under the Education (Administrative Provisions) Act, 1907 (7 Edw. VII. c. 43) the Board have pointed out that although they regard any provision as to the co-ordination of such work with that of the county medical officer of health as not immediately within the scope of the above general order, both they and the Board of Education consider that this co-ordination should nevertheless be as close as possible, and that it can be secured by the appointment of the same officer as county medical officer of health and county school medical officer; but that where

SECTION 68. the work of the two officers is more than can be discharged by one officer the case should be met by the appointment of separate and independent officers. Further, that in some instances it may be admissible that such additional assistance as is required in regard to school hygiene should be obtained by the appointment as an assistant medical officer of the medical officer of health of the district or combination of districts of the county. The Board think that the adoption of this course may enable the councils of the districts concerned to obtain the advantage of the services of an officer who does not engage in private practice [see subsection (7)], and intimate that they are prepared to consent, under subsection (7), to the county medical officer of health holding also the office of school medical officer in the county; but they think it generally inadvisable that any other offices should be held by him. Later, the Board took a stronger line and intimated that they considered that the duty of serving as school medical officer under the Education (Administrative Provision) Act, 1907, was *clearly within the scope of the "other duties"* beyond those prescribed by the general order, which under subsection (2) of the above section might be assigned to the medical officer of health of the county by the county council. This seems perfectly just and reasonable; the subsection gives the Board a very free hand, and moreover, subsection (7) infra, while prohibiting the county medical officer of health from engaging in private practice, also permits the Board to consent to his holding another public appointment.

Note to Subsection (3).

See note to subsection (1). The date of the passing of this Act was December 3, 1909.

Note to Subsection (4).

This subsection means that the medical officer of health shall have the powers conferred on inspectors of nuisances by such statutes as the Public Health Act, 1875 (section 102), and the Public Health Acts Amendment Act, 1907 (section 41), which powers are conferred on medical officers of health.

This subsection is applicable to the Administrative County of London, and is the only part of Part III. of this Act that does so apply.

[Section 102 of the Public Health Act, 1875, enacts as follows :—

The local authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done or completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises), may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of the fact, by order under his hand authorize the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

Section 103 enacts that any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds, and section 41 of the Public Health Acts Amendment Act, 1907, enacts as follows :—" Any person duly authorized in writing by the local authority shall, on production of his authorization, be admitted into any premises for the purposes of section 39 of this Act, and the provisions of sections 102 and 103 of the Public Health Act, 1875, shall, with the necessary modifications, apply to his admission " (section 39 relates to the provision and conversion of closet accommodation).]

Note to Subsection (5).

Section 189 of the Public Health Act, 1875, enables an urban authority to remove officers appointed under that Act at their pleasure. The county medical officer is of course appointed under the new Act, and therefore the before mentioned section of the Public Health Act is in no way modified. It is submitted that the county medical officer cannot expressly contract against being dismissed in the manner provided by the above subsection. See also next subsection and note thereto.

Presumably the county council may at their discretion suspend the medical officer from the discharge of his duties provided they forthwith report the suspension to the Board together with the cause thereof ; but the Board could, in such a case, remove the suspension and reinstate the officer. And again, it is submitted that where any change in the duties or salary of the county medical officer may be deemed necessary by the county council, and such officer shall decline to acquiesce therein, the county council may, with the consent of the Board, after six months' notice in writing, signed by their clerk, given to such officer, determine his office. (Articles 11 and 12 of the General Order, March 23, 1891).

Note to Subsection (6).

It is clearly undesirable that an officer who may formerly have engaged in private practice, should be under the necessity of having his term of office renewed. The proviso relates merely to a temporary expedient pending the appointment of a permanent officer.

This subsection therefore varies Article 10 of the General Order of the Board, dated March 23, 1891, which ran: " Every officer shall continue to hold office *for such period as the sanitary authority may*, subject to our approval, *determine at the time of his appointment*, or

SECTION 69. until he die, or resign, *or be removed by such authority with our assent,* or be removed by us, or be proved insane by evidence which we shall deem sufficient."

Note to Subsection (7).

The date of the passing of this Act is December 3, 1909. This subsection re-enacts and amends subsection (1) of section 17 of the Local Government Act, 1888, by substituting the consent of the Local Government Board for that of the county council, and "any other public appointment" for "any other appointment."

See also note to subsection (2), sub nom. "School Medical Officer."

Note to Subsection (8).

The General Order referred to is cited in the note to subsection (2).

Duty of clerk and medical officer of health of district council to furnish information to medical officer of health of county council.

69.—(1) The clerk of a rural district council shall forward to the medical officer of health of the county a copy of any representation, complaint, or information, a copy of which it is the duty of the district council to forward to the county council under section forty-five of the Housing of the Working Classes Act, 1890 (which relates to the powers of county councils).

(2) The medical officer of health of a district shall give to the medical officer of health of the county any information which it is in his power to give, and which the medical officer of health of the county may reasonably require from him for the purpose of his duties prescribed by the Local Government Board.

(3) If any dispute or difference shall arise between the clerk or the medical officer of health of a district council and the medical officer of health of a county council under this section, the same shall be referred to the Local Government Board, whose decision shall be final and binding.

(4) If the clerk or medical officer of health of a district council fails to comply with the provisions of this section, he shall on information being laid by the county council, but not otherwise, be liable on summary conviction in respect of each offence to a fine not exceeding ten pounds.

Note to Subsection (1).

Section 45 of the Housing of the Working Classes Act, 1890, requires a rural district council (therein referred to as rural sanitary authority) to forward forthwith to the county council a copy of any complaint or information made or given by the medical officer of health or any

inhabitant householders to such district council or to their medical officer of health [see on this note to section 68 (1)], respecting any dangerous or unhealthy dwelling house, or any obstructive building, or any dwelling-house in respect of which a closing order has been made. This section of the new Act makes it the personal duty of the clerk of a rural district council to forward, not to the county council, but to the medical officer of health of the county the copy or copies aforesaid.

The subsection does not refer to other than rural district councils. Subsection (2) infra refers to both urban and rural district councils. Section 45 of the Housing Act, 1890, it may be here noted, does not refer to urban districts other than in the administrative county of London, and Woolwich. Part III. of this Act does not, for the most part, apply to London (see section 7).

Note to Subsection (2).

"OF A DISTRICT"—i.e., rural or urban. See note to subsection (1).

Extent of Part III.

70. The foregoing provisions of this Part of this Act shall not apply to Scotland or, except subsection (4) of section sixty-eight, to the administrative county of London, and, in the application of the said subsection to London, the reference to a medical officer of health of a district shall be construed as a reference to the medical officer of health of a metropolitan borough.

Note.

As to the appointment of medical officers of health for the administrative county of London, see the provisions of section 106 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

Public health and housing committee of county councils.

71.—(1) Every county council shall establish a public health and housing committee, and all matters relating to the exercise and performance by the council of their powers and duties as respects public health and the housing of the working classes (except the power of raising a rate or borrowing money) shall stand referred to the public health and housing committee, and the council, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of the public health and housing committee with respect to the matter in question, and the council may also delegate to the public health and housing committee, with or without restrictions or conditions as they think fit, any of their powers as respects public health and the housing of the working classes, except the power of raising a rate or borrowing money and except any power of resolving that the powers of a district council in default should be transferred to the council.

SECTION 72.

(2) This section shall not apply to Scotland or the London County Council.

Note to Subsection (1).

As to the Board's opinion that the expression "public health" as here used includes such a matter as the administration of the Sale of Food and Drugs Act, see note to section 68 (2), sub nom. "Sale of Food and Drugs," p. 171.

The Board intimate that the county council should appoint the committee under this section as soon as practicable.

The committee's powers, it will be noticed, may be either (i) to report on all matters automatically referred to them or (ii) to act in place of the full council upon such of the powers as are delegated to them by the council. As to (i) it will be seen that where the council consider the matter urgent, they are not to allow delay by considering the committee's report, but are, presumably, to act upon it at once. The importance of thus expediting the carrying out of their powers under the Housing Acts will be especially appreciated in those rural districts where there is a notorious inadequacy of dwellings for agricultural labourers.

Formation and extension of building societies.

72.—(1) The county council may promote the formation or extension of and may, subject to the provisions of this section, assist societies on a co-operative basis, having for their object or one of their objects the erection or improvement of dwellings for the working classes.

(2) The county council, with the consent of and subject to the regulations made by the Local Government Board, may for the purpose of assisting a society make grants or advances to the society, or guarantee advances made to the society, upon such terms and conditions as to rate of interest and repayment, or otherwise, and on such security, as the council think fit, and the making of such grants or advances shall be a purpose for which a council may borrow:

Provided that the regulations of the Board shall provide that any such advance made on the security of any property shall not exceed two-thirds of the value of that property.

Note to Subsection (1).

This is in accordance with the general tenor of the whole Act, which is not only to invite co-operation from private persons or bodies, but to assist them financially.

"SOCIETIES ON A CO-OPERATIVE BASIS."

This section refers more particularly, no doubt, to those co-operative associations, usually incorporated, which are established for the purpose of accumulating and loaning money to the members upon mortgage. The practice is for the members to pay monthly or other periodical instalments upon each share of stock. Members who desire to borrow

from the society pay interest on their loans in addition to these periodical payments. When the stock, by successive payments and the accumulation of interest, has reached par, the mortgages given by borrowing members are cancelled, and the non-borrowing members receive in cash the par of their stock.

It will be noticed that the heading or marginal note to this subsection refers specifically to "building societies." But a marginal note is not part of an Act of Parliament, and it may be assumed that any co-operative association, incorporated or unincorporated, will come within the scope of the above section. It is submitted that the societies intended here will include whatever societies can be said to come within the meaning of the expression "public utility society" (see section 4 of Part I. and notes thereto).

Note to Subsection (2).

Loans may also be made to the society by the Public Works Loan Commissioners (see section 4 of Part I.). The limit is that which is provided by the Trustee Act, 1893 (56 & 57 Vict. c. 53, 8), and by the procedure in the Court of Chancery.

The Board have not yet issued any special regulations under this section of the Act.

PART IV.

Supplemental.

Provisions as to commons and open spaces.

73.—(1) Where any scheme or order under the Housing Acts or Part II. of this Act authorizes the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment, the scheme or order, so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the Local Government Board after consultation with the Board of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate the Board shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorizes such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common

SECTION 73. or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

Note to Subsection (1).

This section forms an exception to the change made by section 2 of this Act (see section 2 of Part I. and note thereto), and enacts that where an improvement scheme, or a reconstruction scheme, or a town planning scheme, or a project for building working class lodging houses, comprises, in the land acquired or appropriated to the purposes of the scheme or project, any open space, allotment, or right of common or common, that scheme or project must run the risk of a provisional order bill, and will have no effect save and until it be confirmed by Parliament, unless land equally good and advantageous to the owners and the public be given in exchange. It appears that the decision of the Local Government Board after consultation with the Board of Agriculture as to the question of advantageousness in the exchange is final.

"COMMON," "COMMONABLE RIGHTS" [see also subsection (4)].

A right of common is a profit which a man has in the land of another, and is chiefly of four sorts: common of pasture, of piscary, of herbary, and of estovers. Common of pasture is a right of feeding one's beasts on another's land: for in those waste grounds, which are called commons, the property of the soil is generally in the lord of the manor. This is the most frequent of the kinds of rights of common. There are two less frequent kinds of common of pasture known as common of vicinage and common of shack: the former is where lands of two adjacent parishes may be depastured by beasts belonging to the parishioners of both parishes; the latter is where the owners of several strips of land forming part of an arable field have a right of pasture over the whole of that field. The right of common of pasture as in the case of the other rights of common, is usually a right enjoyed by reason of owning land in a particular neighbourhood. When it is enjoyed without reference to such ownership, it is known as a right in gross. Otherwise it is known as a right (*a*) appendant, (*b*) appurtenant. The right is "appendant" when freeholders of a manor are entitled by operation of law (i.e., by descent or otherwise than by any act on the part of the freeholder enjoying the right) to depasture commonable beasts on the waste lands of the manor; and only horses, oxen, cows and sheep are "commonable," these being connected with the freeholders' arable land. The number of beasts that may be depastured is

limited or, as it is said, " without stint." The right is " appurtenant " (i) where freeholders of manors claim by grant or prescription, and not " by operation of law "; (ii) where freeholders not of the manor claim the right; (iii) where copyholders claim the right, which they may do by special custom, ascertainable usually by reference to the court rolls. Common of piscary means the liberty of fishing in another man's water. Common of herbary, the liberty of digging turf upon another man's land, and sometimes of taking away therefrom stone, sand, etc. Common of herbary is appendant or appurtenant to a house only and not to land, for it exists for the purpose of using the turves for fuel. Therefore, it does not give a right to take green turf for making glass plots or for repairing the hedges or fences of a garden (*Wilson* v. *Willis*, 7 East 121). Common of estovers or wood (Fr. estoffer, to furnish) means the liberty of taking necessary wood from another's land for the use or furniture of a house or farm; and the right may be claimed either by grant or prescription.

Commons might be inclosed either under the ancient Statute of Merton (1235) or (and far more generally) under the Inclosure Acts, 1845 to 1882. The effect of the inclosure of common lands is to extinguish the " commonable rights " or rights of common to which they might have been subject before inclosure.

Any inclosure now made would be under the control of the Inclosure Department of the Board of Agriculture. Consequently, the above section enacts that the advice of that Board shall be sought by the Local Government Board, where it is proposed to exchange lands for other lands appropriated for the purposes of the Housing Acts and which form part of any common, open space or allotment.

" EQUALLY ADVANTAGEOUS TO THE PUBLIC."

These words have reference to the open spaces, village greens, town greens, public parks and recreation grounds, so essential to the consideration of public health, and which, after the formation of the Commons Preservation Society, and the consequent passing in 1876 of the Commons Act, 1876, it became the policy of the Legislature to save from inclosure.

Note to Subsection (2).

See note to section 63, as to section 85 of the principal Act in regard to local inquiries under the Housing Acts.

The public notice will, it is presumed, be given in one or more newspapers circulating in the locality concerned.

Note to Subsection (3).

It would seem that this subsection indicates that there will be no such procedure as that set forth in sections 99 to 107 of the Lands Clauses Acts, which provide for meetings of Commoners or other parties interested, to choose a committee for the purpose of making agreements with the promoters on behalf of all the parties interested, and, further, for proper conveyances to be made as between vendor and purchaser, or, in default, for a deed poll to be executed by the promoters conveying to themselves. Neither this procedure under the Lands Clauses Acts, nor, apparently, any procedure by vesting order in any way applies to the case under this section. The Provisional Bill, when subsequently it becomes an Act of Parliament, will be the equivalent of the title deeds of the various parties, i.e. the local authority, and the persons previously owning the exchanged lands.

SECTION 74.

Note to Subsection (4).

"COMMON," "VILLAGE-GREEN."

These are both popular expressions, in so far as they denote a piece of land. "Common," as a legal term, rather denotes a right of common. The term "village green" has before now crept into an Act of Parliament, but there is no exact legal definition of it. No village or town green can be inclosed under the Inclosure Acts, these Acts containing provisions for their preservation as recreation grounds.

"OPEN SPACE."

Hitherto this expression has never been a term of art; it connoted no more than the movement for the preservation of commons for the public benefit, or to use a familiar phrase, for the enjoyment of the country.

"ALLOTMENT."

This is wider than the meaning in the Small Holdings and Allotments Act, 1908, section 61, which makes no mention of "fuel allotment." Fuel allotments are usually vested, by the Inclosure Acts and Awards, in the parish authorities—viz., churchwardens and overseers of the poor. Their object is to supply the poor or the cottagers with fuel.

Local authorities, however, will experience no difficulties over these definitions, the Inclosure Acts and Awards clearly defining what particular lands are subject to inclosure or set out as fuel or field garden allotments.

Provisions as to land in neighbourhood of royal palaces or parks.

74.—(1) Where any land proposed to be included in any scheme or order to be made under the Housing Acts or Part II. of this Act, or any land proposed to be acquired under the Housing Acts or Part II. of this Act, is situate within the prescribed distance from any of the royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the Local Government Board shall, before confirming the scheme or order or authorizing the acquisition of the land or the raising of any loan for the purpose, take into consideration any recommendations they may have received from the Commissioners of Works with reference to the proposal.

(2) For the purposes of this section "prescribed" means prescribed by regulations made by the Local Government Board after consultation with the Commissioners of Works.

Note.

The Board have by Order, No. 55,763, dated 2nd September, 1910, after consultation with the Commissioners of Works made regulations determining the prescribed distance for the purposes of the above section. The prescribed distance is in the case of Windsor Castle, Windsor Great Park, and Windsor House, to be two miles, and in the case of any other royal palace or park, half a mile.

75. The enactments mentioned in the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule. SECTIONS 75, 76. Repeal.

76.—(1) This Act may be cited as the Housing, Town Planning, etc., Act, 1909, and Part I. of this Act shall be construed as one with the Housing of the Working Classes Acts, 1890 to 1903, and that Part of this Act and those Acts may be cited together as the Housing of the Working Classes Acts, 1890 to 1909. Short title and extent.

(2) This Act shall not extend to Ireland.

Note.

The effect of this section is that a local authority may delegate to a committee formed under section 81 of the Housing of the Working Classes Act, 1890, their powers under sections 17 and 18 of this Act.

SCHEDULES.

SCHED. I.

FIRST SCHEDULE.

SECTION 2.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A LOCAL AUTHORITY FOR THE PURPOSES OF PART III. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890.

(1) Where a local authority propose to purchase land compulsorily under this Act, the local authority may submit to the Board an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) An order under this schedule shall be of no force unless and until it is confirmed by the Board, and the Board may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this Schedule, become final and have effect as if enacted in this Act ; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(3) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory.

(4) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845) and sections seventy-

seven to eighty-five of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly.

(5) The order shall be published by the local authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land as may be prescribed.

(6) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

(7) Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of adjoining land, and such person shall in England have for the purpose of the inquiry all the powers of an inspector of the Local Government Board, and, if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that owing to its extent or situation or the purpose for which it is used it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the condi-

tions specified in his report, then, if the Local Government Board confirm the order in respect of that land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament.

Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat.

(8) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorized to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

(9) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily.

(10) The remuneration of an arbitrator appointed under this schedule shall be fixed by the Board.

(11) In construing for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

(12) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to

be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(13) In this schedule the expression "Board" means the Local Government Board, and the expression "prescribed" means prescribed by the Board.

(14) The provisions of this schedule, except those relating to land belonging to an ecclesiastical benefice, shall apply to Scotland, subject to the following modifications :—

(*a*) for the reference to section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845, there shall be substituted a reference to section one hundred and twenty of the Lands Clauses Consolidation (Scotland) Act, 1845, and for the reference to sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, there shall be substituted a reference to sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845 ;

(*b*) for references to an arbitrator there shall be substituted references to an arbiter ;

(*c*) for the references to the Lord Chancellor there shall be substituted a reference to the Lord Advocate ;

(*d*) for the reference to the Local Government Board there shall be substituted a reference to the Local Government Board for Scotland, and for the reference to a borough or urban district there shall be substituted a reference to a burgh.

SCHED. II.

SECOND SCHEDULE.

SECTION 46.

MINOR AMENDMENTS OF HOUSING ACTS.

Enactment to be amended.	Nature of Amendment.
Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).	
Section 23 . .	After the word " displaced " the words " in consequence of " shall be substituted for the word " by."
Section 34 . .	The words " the order becomes operative " shall be substituted for the words " service of the order."
Section 35 . .	The words " if he is not entitled to appeal to the Local Government Board against the order " shall be inserted after the word " may " where it first occurs.
Section 38 (1) (*a*)	The words " or impedes " shall be inserted after the word " stops."
Section 38 (7) .	The words " house or other building or manufactory " shall be substituted for the words " house or manufactory " wherever they occur in that subsection.
Section 39 (8) .	The words " as amended by any subsequent Act " shall be inserted after the word " Act " where it first occurs, and the words " to the power of the Local Government Board to enforce that duty " shall be inserted after the word " execution."
Section 40 . .	After the word " displaced " the words " in consequence of " shall be substituted for the word " by."
Section 85 . .	The words " powers and " shall be inserted before the word " duties."
Section 88 . .	The words " or Part III." shall be inserted after the words " Part II."
Section 89 . .	After the word " Act " where it first occurs the words " or any person authorized to enter dwelling-houses, premises, or buildings in pursuance of this Act " shall be inserted; the words " authority or person " shall be substituted for the words " or authority," and the word " he " shall be substituted for the words " such person."

THIRD SCHEDULE.

SECTION 53.

MODIFICATIONS OF THE SCHEDULE TO THE HOUSING OF THE WORKING CLASSES ACT, 1903, IN ITS APPLICATION TO SCOTLAND.

In the above-mentioned schedule, as applying to Scotland, the expression "district within the meaning of the Public "Health (Scotland) Act, 1897," shall be substituted for the expressions "borough," "urban district," and "parish" respectively; "Local Government Board for Scotland" shall be substituted for "Local Government Board"; "every such "appropriation of lands shall be recorded as a real burden "affecting such lands in the appropriate register of sasines" shall be substituted for "every conveyance, demise, or lease of "any such lands shall be endorsed with notice of this pro-"vision"; subsections one and three (with the substitution of "the Local Government Board for Scotland for the Secretary "for Scotland) of section ninety-three of the Local Government "(Scotland) Act, 1889" shall be substituted for "subsections "one and five of section eighty-seven of the Local Govern-"ment Act, 1888"; "Court of Session" shall be substituted for "High Court"; "order of the Court of Session on the "application of the Board" shall be substituted for "man-"damus"; and "local authority for the purposes of the "Public Health (Scotland) Act, 1897, in whose district" shall be substituted for "council of any administrative county "and the district council of any county district; or in London "the council of any metropolitan borough, in which."

SCHED. IV.

FOURTH SCHEDULE.

SECTION 55.

MATTERS TO BE DEALT WITH BY GENERAL PROVISIONS PRESCRIBED BY THE LOCAL GOVERNMENT BOARD.

1. Streets, roads, and other ways, and stopping up, or diversion of existing highways.

2. Buildings, structures, and erections.

3. Open spaces, private and public.

4. The preservation of objects of historical interest or natural beauty.

5. Sewerage, drainage, and sewage disposal.

6. Lighting.

7. Water supply.

8. Ancillary or consequential works.

9. Extinction or variation of private rights of way and other easements.

10. Dealing with or disposal of land acquired by the responsible authority or by a local authority.

11. Power of entry and inspection.

12. Power of the responsible authority to remove, alter, or demolish any obstructive work.

13. Power of the responsible authority to make agreements with owners, and of owners to make agreements with one another.

14. Power of the responsible authority or a local authority to accept any money or property for the furtherance of the object of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888.

15. Application with the necessary modifications and adaptations of statutory enactments.

16. Carrying out and supplementing the provisions of this Act for enforcing schemes.

17. Limitation of time for operation of scheme.

18. Co-operation of the responsible authority with the

owners of land included in the scheme or other persons interested by means of conferences, etc.

19. Charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase, and for that purpose applying, with the necessary adaptations, the provisions of any enactments dealing with charges for improvements of land.

SCHED. V.

FIFTH SCHEDULE.

SECTION 56.

1. Procedure anterior to and for the purpose of an application for authority to prepare or adopt a scheme :—

(*a*) Submission of plans and estimates.
(*b*) Publication of notices.

2. Procedure during, on, and after the preparation or adoption and before the approval of the scheme :—

(*a*) Submission to the Local Government Board of the proposed scheme, with plans and estimates.

(*b*) Notice of submission of proposed scheme to the Local Government Board.

(*c*) Hearing of objections and representations by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme

(*d*) Publication of notice of intention to approve scheme and the lodging of objections thereto.

3. Procedure after the approval of the scheme :—

(*a*) Notice to be given of approval of scheme.

(*b*) Inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme.

4. Duty at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme.

5. The details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.

SIXTH SCHEDULE

SECTION 75.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	Section seventeen, from "who shall not hold" to end of the section.
53 & 54 Vict. c. 70.	The Housing of the Working Classes Act, 1890.	The words "for sanitary purposes" in paragraph (*a*) of subsection (1) of section six.
		Subsection (6) of section eight, and section nine.
		Subsection (5) of section twelve.
		Subsection (2) of section fifteen, including the proviso thereto.
		Sections seventeen, eighteen, and nineteen.
		In section twenty-five, the words at the end of the section "such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority."
		Sections twenty-seven and twenty-eight.
		In section twenty-nine, the words "means any inhabited building and" in the definition of "dwelling-house."
		Sections thirty-two and thirty-three.
		In section thirty-nine, the words "by agreement" in subsection (4) where those words first occur, and all after the word "sanctioned" to the end of that subsection; subsections (5) and (6); the words "to costs to be awarded in certain cases by a Committee of either House of Parliament" in subsection (8); and subsection (9) from "Provided that" to the end.
		In subsection (3) of section forty-seven, the words "the time allowed under any order for the execution of any works or the demolition of a building, or."
		In section fifty-three, subsection (2).
		Section fifty-four, so far as unrepealed.

SCHED. VI.

SIXTH SCHEDULE—*continued.*

Session and Chapter.	Short Title.	Extent of Repeal.
53 & 54 Vict. c. 70.	The Housing of the Working Classes Act, 1890—*cont.*	Section fifty-five, so far as it applies to Scotland. Section sixty-three. Section sixty-five from " and (iii) " to the end of the section. In section sixty-six the words " or special." Section seventy-seven. Section eighty-three. In section eighty-five, the words " not exceeding three guineas a day." Section ninety-two, from " but in " to the end of the section. Subsection (3) except paragraph (*c*), and subsection (4) of section ninety-four. Subsections (1), (2), (7), (8), and (14) of section ninety-six. In subsection (3) of section ninety-seven the words " the time allowed under any order for the execution of any works or the demolition of a building or." The First Schedule, so far as it applies to Scotland. The Third, Fourth, and Fifth Schedules.
59 & 60 Vict. c. 31.	The Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1896.	Section three.
63 & 64 Vict. c. 59.	The Housing of the Working Classes Act, 1900.	Sections two, six, and seven. In section eight the words " Scotland or."
3 Edw. 7. c. 39.	The Housing of the Working Classes Act, 1903.	Paragraphs (*a*) and (*b*) of subsection (2) of section five, sections six and eight, in section ten the words " in the manner provided by subsection three of section thirty-two of the principal Act," and section sixteen. In section seventeen the words " Scotland or."

HOUSING OF THE WORKING CLASSES ACT, 1890.

[53 & 54 Vict. Ch. 70.]

[Part I. Omitted.]

PART II.

UNHEALTHY DWELLING-HOUSES.

Preliminary.

Section 29.

Definitions:

29.—In this part of this Act, unless the context otherwise requires—

"Street."

The expression "street" includes any court, alley, street, square, or row of houses:

"Dwelling-house."

The expression "dwelling-house" includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined:

"Owner."

The expression "owner," in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired:

"Closing order."

The expression "closing order" means an order prohibiting the use of premises for human habitation made under the enactments set out in the Third Schedule in this Act.

H.W. C. Act, 1890.
Sections 30, 31, 34.

Buildings unfit for Human Habitation.

Representation by medical officer of health.

30.—It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation.

Representation on householders' complaint.

31.—(1) If in any district any four or more householders living in or near to any street complain in writing to the medical officer of health of that district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority.

(2) If within three months after receiving the said complaint and opinion or representation of the medical officer, the local authority, not being in the administrative county of London, or not being a rural sanitary authority in any other county, declines or neglects to take any proceedings to put this part of this Act in force, the householders who signed such complaint may petition the Local Government Board for an inquiry, and the said Board after causing an inquiry to be held may order the local authority to proceed under this part of this Act, and such order shall be binding on the local authority.

Closing Order and Demolition.

* * *

[Sects. 32 & 33 Repealed.]

Execution of an order for demolition, and provision as to site.

34.—(1) Where an order for the demolition of a building has been made, the owner thereof shall within three months after the order becomes operative proceed to take down and remove the building, and if the owner fails therein the local authority shall proceed to take down and remove the building and shall sell the materials, and after deducting the expenses

incident to such taking down and removal, pay over the balance of money (if any) to the owner.

(2) Where a building has been so taken down and removed, no house or other building or erection which will be dangerous or injurious to health shall be erected on all or any part of the site of such building; and if any house, building, or erection is erected contrary to the provisions of this section, the local authority may at any time order the owner thereof to abate the same, and in the event of non-compliance with the order, may at the expense of the owner abate or alter the same.

Appeal against order of local authority.

35.—(1) Any person aggrieved by an order of the local authority under this part of this Act, may if he is not entitled to appeal to the Local Government Board against the order appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings taken under any order until after the appeal is determined or ceases to be prosecuted; and section thirty-one of the Summary Jurisdiction Act, 1879, respecting appeals from courts of summary jurisdiction to courts of quarter sessions shall apply with the necessary modifications as if the order of the local authority were an order of a court of summary jurisdiction.

(2) Provided that—

(*a*) Notice of appeal may be given within one month after notice of the order of the local authority has been served on such person;

(*b*) The court shall, at the request of either party, state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court.

Grant of charges by way of annuity to owner on completion of works.

36.—(1) Where any owner has completed in respect of any dwelling-house any works required to be executed by an order of a local authority under this part of this Act, he may apply to the local authority for a charging order, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for the costs, charges, and expenses of the works, and the local authority, when satisfied that the owner has duly executed such works and of the amount of such costs, charges, and expenses, and of the costs of obtaining the charging order which have been

H.W. C. Act, 1890. Section 37.

properly incurred, shall make an order accordingly, charging on the dwelling-house an annuity to repay the amount.

(2) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

(3) Every such annuity may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the dwelling-house by the owner thereof.

(4) Charging orders made under this section shall be made according to the Form marked A. in the Fifth Schedule to this Act, or as near thereto as the circumstances of the case will admit.

Incidence of charge.

37.—(1) Every charge created by a charging order under this part of this Act shall be a charge on the dwelling-house specified in the order having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation, rentcharge, and any charge created under any Act authorizing advances of public money; and where more charges than one are charged under this part of this Act on any dwelling-house such charges shall, as between themselves, take order according to their respective dates.

(2) A charging order shall be conclusive evidence that all notices, acts, and proceedings by this part of this Act directed with reference to or consequent on the obtaining of such order, or the making of such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the dwelling-house declared to be subject thereto.

(3) Every such charging order, if it relates to a dwelling-house in the area to which the enactments relating to the registration of land in Middlesex apply or to a dwelling-house in Yorkshire, shall be registered in like manner as if the charge were made by deed by the absolute owner of the dwelling-house.

(4) Copies of the charging order and of the certificate of the surveyor or engineer, and of the accounts as passed by the

local authority, certified to be true copies by the clerk of the local authority, shall within six months after the date of the order be deposited with the clerk of the peace of the county in which the dwelling-house is situate, and be by him filed and recorded.

(5) The benefit of any such charge may be from time to time transferred in like manner as a mortgage or rentcharge may be transferred. Any transfer may be in the Form marked B. in the Fifth Schedule to this Act, or in any other convenient form.

Obstructive Buildings.

Power to local authority to purchase houses for opening alleys, etc.

38.—(1) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

(*a*) It stops or impedes ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or

(*b*) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings;

in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building") stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2) Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

(3) The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they decide to proceed, shall cause a copy of both the representation and

H.W. C. Act, 1890. Section 38.

report to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.

(4) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorized to purchase the lands on which the obstructive building is erected in like manner as if they had been authorized by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act), and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this Act.

(7) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner

of a house or other building or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or other building or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part.

(8) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, shall so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

(9) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

(10) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order

H.W. C. Act, 1890. Section 39.

the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

(11) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

(12) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

Scheme for Reconstruction.

Scheme for area comprising houses closed by closing order.

39.—(1) In any of the following cases, that is to say—

(*a*) where an order for the demolition of a building has been made in pursuance of this part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say, either—

(i) dedicated as a highway or open space, or

(ii) appropriated, sold, or let for the erection of dwellings for the working classes, or

(iii) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection; or

(*b*) where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the said buildings

or of the neighbouring buildings, and that the demolition or the reconstruction and re-arrangement of the said buildings or of some of them is necessary to remedy the said evils, and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act,

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

(2) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained.

(3) The local authority shall, after service of such notice, petition the Local Government Board for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications.

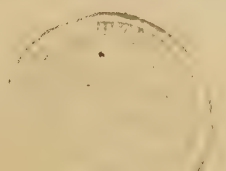
(4) Upon such order being made, the local authority may purchase the area comprised in the scheme as so sanctioned.

* * *

[Sub-sections (5) & (6) Repealed.]

(7) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order: Provided that the amount of compensation shall, in case of difference, be settled by arbitration in manner provided by this part of this Act.

(8) The provisions of Part I. of this Act as amended by



H. W. C. Act, 1890. Sections 40, 41.

any subsequent Act relating to the duty of a local authority to carry a scheme when confirmed into execution, to the power of the Local Government Board to enforce that duty, to the completion of a scheme on failure by a local authority, and to the extinction of rights of way and other easements, shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act.

(9) The Local Government Board, on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution.

* * *

Provisions for accommodation of persons of the working classes.

40.—The Local Government Board shall in any order sanctioning a scheme under this part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the working classes displaced in consequence of the scheme as seem to the Board required by the circumstances.

Settlement of Compensation.

Provisions as to arbitration.

41.—In all cases in which the amount of any compensation is, in pursuance of this part of this Act, to be settled by arbitration, the following provisions shall have effect; (namely,)

(1) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board.

(2) In settling the amount of any compensation—

(*a*) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase; and

(*b*) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his

opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.

(3) Evidence shall be receivable by the arbitrator to prove—

(1st) that the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly) that the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair; or

(3rdly) that the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(*a*) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(*b*) shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

(*c*) shall in the third case be the value of the land, and of the materials of the buildings thereon.

(4) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local

authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

(5) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this part of this Act.

(6) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority; but he may, and, if the local authority request him so to do, shall, from time to time make an award respecting a portion only of the disputed cases brought before him.

(7) In the event of the death, removal, resignation or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered.

(8) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.

(9) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to any party where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.

(10) If within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum

for any time during which the same remains unpaid after such seven days as aforesaid.

(11) The award of the arbitrator shall be final and binding on all parties.

Expenses and Borrowing.

Expenses of local authority.

42.—(1) All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed by them out of the local rate; and that authority, notwithstanding any limit contained in any Act of Parliament respecting a local rate, may levy such local rate, or any increase thereof, for the purposes of this part of this Act.

(2) Any expenses incurred by a rural sanitary authority under this part of this Act, other than the expenses incurred in and incidental to proceedings for obtaining a closing order, shall be charged as special expenses on the contributory place in respect of which they are incurred.

Provision as to borrowing.

43.—(1) A local authority may borrow for the purpose of raising sums required for purchase money or compensation payable under this part of this Act in like manner, and subject to the like conditions, as for the purpose of defraying the expenses of the execution by such authority of the Public Health Acts.

(2) The Public Works Loan Commissioners may, if they think fit, lend to any local authority the sums borrowed in pursuance of this part of this Act.

Annual account to be presented by the local authority.

44. Every local authority shall every year present to the Local Government Board, in such form as they may direct, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this part of this Act.

Powers of County Councils.

Powers of county councils.

45.—(1) Where the medical officer of health or any inhabitant householders make a representation or complaint, or give information to any vestry or district board in the administrative county of London or to the local board of Woolwich, or to any rural sanitary authority elsewhere (which vestry, board, or authority is in this Act referred to as the district authority) or to the medical officer of such authority either respecting any dwelling-house being in a state so dangerous

or injurious to health as to be unfit for human habitation, or respecting an obstructive building, and also where a closing order has been made as respects any dwelling-house, the district authority shall forthwith forward to the county council of the county in which the dwelling-house or building is situate, a copy of such representation, complaint, information, or closing order, and shall from time to time report to the council such particulars as the council require respecting any proceedings taken by the authority with reference to such representation, complaint, information, or dwelling-house.

(2) Where the county council—

(*a*) are of opinion that proceedings for a closing order as respects any dwelling-house ought to be instituted, or that an order ought to be made for the demolition of any buildings forming or forming part of any dwelling-house as to which a closing order has been made, or that an order ought to be made for pulling down an obstructive building specified in any representation under this part of this Act; and

(*b*) after reasonable notice, not being less than one month, of such opinion has been given in writing to the district authority, consider that such authority have failed to institute or properly prosecute proceedings, or to make the order for demolition, or to take steps for pulling down an obstructive building;

the council may pass a resolution to that effect, and thereupon the powers of the district authority as respects the said dwelling-house and building under this part of this Act (otherwise than in respect of a scheme), shall be vested in the county council, and if a closing order or an order for demolition or for pulling down an obstructive building is made, and not disallowed on appeal, the expenses of the council incurred as respects the said dwelling-house and building, including any compensation paid, shall be a simple contract debt to the council from the district authority.

(3) Any debt to the council under this section shall be defrayed by the district authority as part of their expenses in the execution of this part of this Act.

(4) The county council and any of their officers shall, for the purposes of this section, have the same right of admission to any premises as any district authority or their officers

have for the purpose of the execution of their duties under the enactments relating to public health, and a justice may make the like order for enforcing such admission.

Special Provisions as to London.

Application of part of Act to London.

46. This part of this Act shall apply to the administrative county of London with the following modifications :—

(1) The provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, for the purpose of this part of this Act, extend to the county and to the city of London, and in the construction of the said provisions, as respects the county of London, any local authority in that county, and as respects the city of London the Commissioners of Sewers, shall be deemed to be the urban authority.

(2) The raising of sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which the London County Council or the Commissioners of Sewers of the city of London, may borrow under Part One of this Act, and a purpose for which a vestry or district board may borrow under the Metropolis Management Act, 1855, and the provisions of Part One of this Act with respect to borrowing, and sections one hundred and eighty-three to one hundred and ninety-one of the Metropolis Management Act, 1855, shall apply and have effect accordingly.

(3) The London County Council may, if they think fit, lend to a local authority in the administrative county of London the sums borrowed in pursuance of this part of this Act.

(4) For the purpose of the assent required for the sale of any portion of the site of an obstructive building by a local authority, and of the account to be presented by a local authority of what has been done by them and of moneys received and paid by them during the previous year a Secretary of State shall be substituted for the Local Government Board.

(5) Where it appears to the county council, whether in the exercise of the powers of a vestry or district board or on the representation of a vestry or district board or otherwise, that a scheme under this part of this Act ought to be made, the council may take proceedings for preparing and obtaining

H.W. C. Act, 1890. Section 46.

the confirmation of a scheme, and the provisions of this Act respecting the scheme shall apply in like manner as if they were the vestry or district board, and all expenses of and incidental to the scheme and carrying the same into effect shall, save as herein-after mentioned, be borne by the county fund.

(6) Where the council consider that such expenses, or a contribution in respect of them, ought to be paid or made by a vestry or district board, they may apply to a Secretary of State, and the Secretary of State, if satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the vestry or district board ought to pay, or make a contribution in respect of, the said expenses, the Secretary of State may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the vestry or district board to the council.

(7) The county council may, if they think fit, pay or contribute to the payment of the expenses of carrying into effect a scheme under this part of this Act by a vestry or district board, and if a vestry or district board consider that the expenses of carrying into effect any scheme under this part of this Act, or a contribution in respect of those expenses, ought to be paid or made by the county council, and the county council decline or fail to agree to pay or make the same, the vestry or district board may apply to a Secretary of State, and if the Secretary of State is satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the council ought to pay or make a contribution in respect of the said expenses, he may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the council to the vestry or district board.

(8) In the application of this section to Woolwich, the local board of health shall be deemed to be a district board, but the raising of any sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which they may borrow under the Public Health Acts, and the Public Health Acts shall apply accordingly.

Supplemental.

Provision as to superior landlord.

47.—(1) Where an owner of any dwelling-house is not the person in receipt of the rents and profits thereof, he may give notice of such ownership to the local authority, and thereupon the local authority shall give such owner notice of any proceedings taken by them in pursuance of this part of this Act in relation to such dwelling-house.

(2) If it appears to a court of summary jurisdiction on the application of any owner of the dwelling-house that default is being made in the execution of any works required to be executed on any dwelling-house in respect of which a closing order has been made, or in the demolition of any building or any dwelling-house or in claiming to retain any site, in pursuance of this part of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the court may make an order empowering the applicant forthwith to enter on the dwelling-house, and within the time fixed by the order to execute the said works, or to demolish the building or to claim to retain the site, as the case may be, and where it seems to the court just so to do, the court may make a like order in favour of any other owner.

(3) A court of summary jurisdiction may in any case by order enlarge the time within which a claim may be made to retain the site of a building.

(4) Before an order is made under this section notice of the application shall be given to the local authority.

Remedies of owner for breach of covenant, etc., not to be prejudiced.

48.—Nothing in this part of this Act shall prejudice or interfere with the right or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any dwelling-house in respect of which an order is made by a local authority under this part of this Act; and if any owner is obliged to take possession of any dwelling-house in order to comply with any such order, the taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

Service of notices.

49.—(1) Where the owner of any dwelling-house and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority,

H.W.C. Act, 1890. Sections 50 51, 52.

if the residence or place of business is within the district of such local authority, to serve any notice by this part of this Act required to be served on the owner, by giving it to him, or for him, to some inmate of his residence or place of business within the district; and in any other case it shall be the duty of the clerk of the local authority to serve the notice by post in a registered letter addressed to the owner at his residence or place of business.

(2) Where the owner of the dwelling-house or his residence or place of business is not known to, and after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3) Notice served upon the agent of the owner shall be deemed notice to the owner.

Description of owner in proceedings.

50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

Penalty for preventing execution of Act.

51.—(1) If any person being the occupier of any dwelling-house prevents the owner thereof, or being the owner or occupier of any dwelling-house prevents the medical officer of health, or the officers, agents, servants, or workmen of such owner or officer from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act, after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things requisite for carrying into effect, with respect to such dwelling-house, the provisions of this part of this Act.

(2) If at the expiration of ten days after the service of such order such person fails to comply therewith, he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding twenty pounds: Provided that if any such failure is by the occupier, the owner, unless assenting thereto, shall not be liable to such fine.

Report to local authority by county medical officer.

52. A representation from the medical officer of health of any county submitted to the county council and forwarded by that council to the local authority of any district in the

county, not being a borough as defined by the Municipal Corporations Act, 1882, shall, for the purposes of this part of this Act, have the like effect as a representation from the medical officer of health of the district. H.W.C. Act, 1890 Sections 53, 56, 57.

PART III.

WORKING CLASS LODGING HOUSES.

Adoption of Part III.

Definition of purposes of Labouring Classes Lodging Houses Acts.

53.—(1) The expression "lodging houses for the working classes" when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

* * *

[Sects. 54 & 55 Repealed.]

Execution of Part III. by Local Authority.

Powers of local authority.

56. Where this part of this Act has been adopted in any district, the local authority shall have power to carry it into execution (subject to the provisions of this part of this Act with respect to rural sanitary authorities), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.

Acquisition of land.

57.—(1) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local authority in the said sec-

H.W.C. Act, 1890. Sections 58, 59, 60, 61.

tions mentioned, and a Secretary of State were substituted for the Local Government Board.

(2) The local authority may, if they think fit, contract for the purchase or lease of any lodging houses for the working classes already, or hereafter to be built and provided.

(3) The local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this part of this Act, any lodging houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

Local authority may purchase existing lodging houses.

58. The trustees of any lodging houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging houses to the local authority of the district, or make over to them the management thereof.

Erection of lodging houses.

59. The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging houses for the working classes, and convert any buildings into lodging houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Sale and exchange of lands.

60. A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this part of this Act, either with or without paying or receiving any money for equality of exchange.

Management to be vested in local authority.

Management of Lodging Houses.

61.—(1) The general management, regulation, and control of the lodging houses established or acquired by a local autho-

rity under this part of this Act shall be vested in and exercised by the local authority.

(2) The local authority may make such reasonable charges for the tenancy or occupation of the lodging houses provided under this part of this Act as they may determine by regulations.

Byelaws for regulation of lodging houses.

62.—(1) The local authority may make byelaws for the management, use, and regulation of the lodging houses, and it shall be obligatory on the local authority, except in the case of a lodging house which is occupied as a separate dwelling, by such byelaws to make sufficient provision for the several purposes expressed in the Sixth Schedule to this Act.

(2) A printed copy or sufficient abstract of the byelaws relating to the management, use, and regulation of the lodging houses shall be put up and at all times kept in every room therein.

* * *

[Sect. 63 Repealed.]

When lodging houses are considered too expensive they may be sold.

64. Whenever any lodging houses established for seven years or upwards under the authority of this part of this Act are determined by the local authority to be unnecessary or too expensive to be kept up, the local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the lodging houses are situate, sell the same for the best price that can reasonably be obtained for the same, and the local authority shall convey the same accordingly.

Expenses and Borrowing of Local Authorities.

Payment of expenses.

65.—All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed—

(i) in the case of an authority in the administrative county of London, out of the Dwelling House Improvement Fund under Part I. of this Act;

(ii) in the case of an urban sanitary authority, as part of the general expenses of their execution of the Public Health Acts.

* * *

Borrowing for purposes of Part III.

66.—The London County Council and the Commissioners of Sewers may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as they may borrow for the purposes of Part I. of this Act, and a sanitary authority may borrow for the purpose of the execution of this part of this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general expenses.

[Sect. 67 Repealed.]

Powers to companies.

68.—Any railway company, or dock or harbour company or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the working class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorized at any time to erect, either on their own land or on any other land (which they are hereby authorized to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the working class employed by them.

Power to water and gas companies to supply water and gas to lodging houses.

69.—Any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for lodging houses provided under this part of this Act, either without charge or on such other favourable terms as they think fit.

Inspection of lodging houses.

70.—A lodging house established in any district under this part of this Act, shall be at all times open to the inspection of the local authority of that district or of any officer from time to time authorized by such authority.

Application of penalties.

71.—Any fine for the breach of any byelaw under this part of this Act shall be paid to the credit of the funds out of which the expenses of this part of this Act are defrayed.

[Sections 72 to 84 omitted.]

Sections 85, 86, 87, 88.

Local inquiries.

85.—(1) For the purposes of the execution of their duties under this Act the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board or confirming authority engaged in the inquiry, shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board or confirming authority may direct, and that Board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.

(2) Sections two hundred and ninety-three to two hundred and ninety-six and section two hundred and ninety-eight of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board or any local inquiry which that Board cause to be held in pursuance of any part of this Act.

Orders, notices, etc.

86.—(1) An order in writing made by a local authority under this Act shall be under their seal and authenticated by the signature of their clerk or his lawful deputy.

(2) A notice, demand, or other written document proceeding from the local authority under this Act shall be signed by their clerk or his lawful deputy.

Service of notice, etc., on the local authority.

87. Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk, or leaving the same at his office with some person employed there.

Prohibition on persons interested voting as members of local authority.

88.—(1) A person shall not vote as member of a local authority or county council or any committee thereof upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested.

(2) If any person votes in contravention of this section he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

Penalty for obstructing the execution of Act

89. Where any person obstructs the medical officer of health, or any officer of the local authority, or of the confirming authority mentioned in Part I. of this Act, in the performance of anything which such officer or authority is by this Act required or authorized to do, such person shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

Punishment of offences and recovery of fines.

90. Offences under this Act punishable on summary conviction may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Acts.

Powers of Act to be cumulative.

91. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed, and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that a local authority shall not, by reason of any local Act relating to a place within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under any part of this Act.

Definition of local authority, districts, local rate.

92. In this Act, unless the context otherwise requires, "district," "local authority," and "local rate," mean respectively the areas, bodies of persons, and rates specified in the table contained in the First Schedule to this Act.

Definitions:

93. In this Act, unless the context otherwise requires—

The expression "land" includes any right over land.

The expression "sanitary district" means the district of a sanitary authority:

The expression "sanitary authority" means an urban sanitary authority or a rural sanitary authority:

The expressions "urban sanitary authority" and "rural sanitary authority" and "contributory place" have respectively the same meanings as in the Public Health Act, 1875:

The expression "superior court" means the Supreme Court:

The expression "county of London," except where specified to be the administrative county of London, means the county of London exclusive of the city of London.

HOUSING OF THE WORKING CLASSES ACT, 1890, AMENDMENT (SCOTLAND) ACT, 1896.

H.W.C. Act, 1890. Sections 1, 2, 4.

[59 C 60 Vict. Ch. 31.]

An Act to amend the Housing of the Working Classes Act, 1890. [7th August 1896.]

Short title.

1. This Act may be cited as the Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1896.

Re-vesting of lands.

2. Any land acquired by a local authority for the purposes of the Artizans and Labourers Dwellings Improvement (Scotland) Acts, 1875 to 1880, and still held by and vested in them shall be deemed to be held by and vested in them for the purposes of Part I. and relative provisions of the Housing of the Working Classes Act, 1890, without the necessity of expeding or recording any notarial or other instrument.

* * *

[Repealed.]

4. The Housing of the Working Classes Act, 1890, Amendment (Scotland) Act, 1892, is hereby repealed.

H.W.C. Act, 1900.
Sections 1, 3, 4.

HOUSING OF THE WORKING CLASSES ACT, 1900.

[63 & 64 Vict. Ch. 59.]

Chapter 59.

An Act to amend Part III. of the Housing of the Working Classes Act, 1890. [8th August 1900.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Exercise of powers outside district.

1. Where any council, other than a rural district council, have adopted Part Three of the Housing of the Working Classes Act, 1890 (in this Act referred to as "the principal Act"), they may, for supplying the needs of their district, establish, or acquire lodging houses for the working classes under that Part outside their district.

* * *

[Repealed.]

Provisions as to metropolitan borough councils.

3.—(1) Any expenses incurred by the council of a metropolitan borough under Part III. of the principal Act, whether within or without the borough, shall be defrayed as part of the ordinary expenses of the council, and in that Act the expressions "district," "local authority," and "local rate" shall, for the purposes of Part III. of the Act, include a metropolitan borough, the council of the borough, and the general rate of the borough.

(2) Where the council of a metropolitan borough adopt Part III. of the principal Act, the power of the council to borrow for the purposes of that Part shall be exerciseable in the like manner and subject to the like conditions as the power of the council to borrow for the purposes of Part II. of that Act.

Accounts.

4. Where land acquired by a council under Part III. of the principal Act is appropriated for the purpose of re-housing persons displaced by the council under the powers of any

other Part of that Act or of any other enactment, the receipts and expenditure in respect of that land (including all costs in respect of the acquisition and laying out of the land), and of any buildings erected thereon, may be treated as receipts and expenditure under that Part or enactment, but shall be accounted for under a separate head.

Leases by local authority for building lodging houses.

5.—(1) The local authority, if not a rural district council, with the consent of the Local Government Board, and if a rural district council with the consent of the county council, may lease any land acquired by them under and for the purposes of Part III. of the principal Act to any lessee for the purpose and under the condition that the lessee will carry the Act into execution by building and maintaining on the land lodging houses within the meaning of the Act; and the local authority shall insert in every lease all necessary provisions for insuring the user of the land and buildings for lodging houses within the meaning of the Act, and in particular the local authority shall insert in any lease provisions binding the lessee to build on the land as in the lease prescribed, and to maintain and repair the buildings, and securing the use of the buildings exclusively as lodging houses within the meaning of the Act, and prohibiting any addition to or alteration of the character of the buildings without the consent of the local authority; and also a provision for the reentry of the local authority on the land on the breach of any of the terms of the lease; and every deed or instrument of demise of the land or buildings shall be endorsed with notice of this subsection.

Provided that in the case of a council in London, the consent of a Secretary of State shall be substituted for the consent of the Local Government Board.

(2) Sections sixty-one and sixty-two of the principal Act shall not extend to any lodging house to which this section applies.

* * *

[Repealed.]

Short title and extent.

8.—(1) This Act may be cited as the Housing of the Working Classes Act, 1900, and the Housing of the Working Classes Acts, 1890 to 1894, and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1900.

(2) This Act shall not extend to Ireland.

HOUSING OF THE WORKING CLASSES ACT, 1903.

[3 Edw. 7. Ch. 39.]

An Act to amend the Law relating to the Housing of the Working Classes. [14th August 1903.]

General Amendments of Law.

Maximum term for repayment of loans.

1.—(1) The maximum period which may be sanctioned as the period for which money may be borrowed by a local authority for the purposes of the Housing of the Working Classes Act, 1890 (in this Act referred to as "the principal Act"), or any Acts amending it, shall be eighty years, and as respects money so borrowed eighty years shall be substituted for sixty years in section two hundred and thirty-four of the Public Health Act, 1875.

Transfer of powers and duties of Home Office to Local Government Board.

(2) Money borrowed under the principal Act or any Acts (including this Act) amending it (in this Act collectively referred to as the Housing Acts) shall not be reckoned as part of the debt of the local authority for the purposes of the limitation on borrowing under subsections two and three of section two hundred and thirty-four of the Public Health Act, 1875.

2.—(1) His Majesty may by Order in Council assign to the Local Government Board any powers and duties of the Secretary of State under the Housing Acts, or under any scheme made in pursuance of those Acts, and the powers of the Secretary of State under any local Act, so far as they relate to the housing of the working classes, and any such powers and duties so assigned shall become powers and duties of the Local Government Board.

(2) Section eleven of the Board of Agriculture Act, 1889, shall apply with respect to the powers and duties transferred under this section as it applies with respect to the powers and duties transferred under that Act, with the substitution of the Local Government Board for the Board of Agriculture and of the date of the transfer under this section for the date of the establishment of the Board of Agriculture.

3. Where under the powers given after the date of the passing of the Act by any local Act or Provisional Order, or Order having the effect of an Act, any land is acquired, whether compulsorily or by agreement, by any authority, company, or person, or where after the date of the passing of this Act any land is so acquired compulsorily under any general Act (other than the Housing Acts), the provisions set out in the Schedule to this Act shall apply with respect to the provision of dwelling accommodation for persons of the working class.

Re-housing obligations when land is taken under statutory powers.

Amendments as to Schemes.

4.—(1) If, on the report made to the confirming authority on an inquiry directed by them under section ten of the principal Act, that authority are satisfied that a scheme ought to have been made for the improvement of the area to which the inquiry relates, or of some part thereof, they may, if they think fit, order the local authority to make such a scheme, either under Part I. of the principal Act, or, if the confirming authority so direct, under Part II. of that Act, and to do all things necessary under the Housing Acts for carrying into execution the scheme so made, and the local authority shall accordingly make a scheme or direct a scheme to be prepared as if they had passed the resolution required under section four or section thirty-nine of the principal Act, as the case may be, and do all things necessary under the Housing Acts for carrying the scheme into effect.

Provisions on failure of local authority to make a scheme.

Any such order of the confirming authority may be enforced by mandamus.

(2) Any twelve or more ratepayers of the district shall have the like appeal under section sixteen of the principal Act as is given to the twelve or more ratepayers who have made the complaint to the medical officer of health mentioned in that section.

5.—(1) Section seven of the principal Act shall have effect as if the words "in the month of September or October or November" were omitted from paragraph (*a*), and as if the words "during the thirty days next following the date of the last publication of the advertisement" were substituted for the words "during the month next following the month in which such advertisement is published" in paragraph (*b*).

Amendment of procedure for confirming improvement scheme.

H.W.C. Act, 1903. Sections 7, 9, 10.

(2) The order of a confirming authority under subsection four of section eight of the principal Act shall, notwithstanding anything in that section, take effect without confirmation by Parliament.

* * *

(3) For the purposes of the principal Act, the making of an order by a confirming authority, which takes effect under this section without confirmation by Parliament, shall have the same effect as the confirmation of the order by Act of Parliament, and any reference to a Provisional Order, made under section eight of the principal Act, shall include a reference to an order which so takes effect without confirmation by Parliament.

* * *

[Sect. 6 Repealed.]

Amendments as to scheme of reconstruction.

7. Where a scheme for reconstruction under Part II. of the principal Act is made, neighbouring lands may be included in the area comprised in the scheme if the local authority under whose direction the scheme is made are of opinion that that inclusion is necessary for making their scheme efficient, but the provision of subsection two of section forty-one, as to the exclusion of any additional allowance in respect of compulsory purchase, shall not apply in the case of any land so included.

Amendments as to Closing Orders, Demolition, etc.

* * *

[Sect. 8 Repealed.]

Power to recover cost of demolition.

9. Where the amount realized by the sale of materials under section thirty-four of the principal Act is not sufficient to cover the expenses incident to the taking down and removal of a building, the local authority may recover the deficiency from the owner of the building as a civil debt in manner provided by the Summary Jurisdiction Acts, or under the provisions of the Public Health Acts relating to private improvement expenses.

Recovery of possession from occupying tenants in pursuance of closing orders.

10. Where default is made as respects any dwelling house in obeying a closing order . . . possession of the house may be obtained (without prejudice to the enforcement of any penalty under that provision), whatever may be the value or rent of the house, by or on behalf of the owner or local authority, either under sections one hundred and thirty-eight

to one hundred and forty-five of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be obtained, as if the owner or local authority were the landlord. H.W.C. Act 1903. Sections 11, 12, 13.

Any expenses incurred by a local authority under this section may be recovered from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

Miscellaneous.

Powers in connection with provision of dwelling accommodation or lodging-houses.

11.—(1) Any power of the local authority under the Housing Acts, or under any scheme made in pursuance of any of those Acts, to provide dwelling accommodation or lodging-houses, shall include a power to provide and maintain, with the consent of the Local Government Board, and, if desired, jointly with any other person, in connection with any such dwelling accommodation or lodging-houses, any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the Local Government Board will serve a beneficial purpose in connection with the requirements of the persons for whom the dwelling accommodation or lodging-houses are provided, and to raise money for the purpose, if necessary, by borrowing.

(2) The Local Government Board may, in giving their consent to the provision of any land or building under this section, by order apply, with any necessary modifications, to such land or building any statutory provisions which would have been applicable thereto if the land or building had been provided under any enactment giving any local authority powers for the purpose.

Condition in contracts for letting houses for the working classes.

12. Section seventy-five of the principal Act (which relates to the condition to be implied on letting houses for the working classes) shall, as respects any contract made after the passing of this Act, take effect notwithstanding any agreement to the contrary, and any such agreement made after the passing of this Act shall be void.

Service of notices.

13.—(1) Any notice required to be served under Part II. of the principal Act upon an owner shall, notwithstanding anything in section forty-nine of that Act, be deemed to be sufficiently served if it is sent by post in a registered letter addressed to the owner or his agent at his usual or last known residence or place of business.

H.W.C. Act, 1903. Sections 14, 15, 17.

(2) Any document referred to in section eighty-seven of the principal Act shall be deemed to be sufficiently served upon the local authority if addressed to that authority or their clerk at the office of that authority and sent by post in a registered letter.

Special Provisions as to London.

Agreements between London County Council and metropolitan borough councils.

14. The council of a metropolitan borough may, if they think fit, pay or contribute towards the payment of any expenses of the London County Council under subsection five of section forty-six of the principal Act in connection with a scheme of reconstruction, and borrow any money required by them for the purpose under subsection two of the said section; but an order under subsection six shall not be necessary except in cases of disagreement between the county council and the council of the borough.

Provisions consequential on extension of period for repayment of loans.

15. For the purpose of carrying into effect the provisions of this Act as to the maximum period for which money may be borrowed, eighty years shall be substituted for sixty years in section twenty-seven of the Metropolitan Board of Works (Loans) Act, 1869, and such sum as will be sufficient, with compound interest, to repay the money borrowed within such period, not exceeding eighty years, as may be sanctioned by the London County Council, shall be substituted for two pounds per cent. in section one hundred and ninety of the Metropolis Management Act, 1855.

* * *

[Sect. 16 Repealed.]

Supplemental.

Short title and extent.

17.—(1) This Act may be cited as the Housing of the Working Classes Act, 1903, and the Housing of the Working Classes Acts, 1890 to 1900, and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1903.

(2) This Act shall not extend to Ireland.

SCHEDULE.

Sections 3, 16.

(1) If in the administrative county of London or in any borough or urban district, or in any parish not within a borough or urban district, the undertakers have power to take

under the enabling Act working-men's dwellings occupied by thirty or more persons belonging to the working class, the undertakers shall not enter on any such dwellings in that county borough, urban district, or parish, until the Local Government Board have either approved of a housing scheme under this schedule or have decided that such a scheme is not necessary.

For the purposes of this schedule a house shall be considered a working-man's dwelling if wholly or partially occupied by a person belonging to the working classes, and for the purpose of determining whether a house is a working-man's dwelling or not, and also for determining the number of persons belonging to the working classes by whom any dwelling-houses are occupied, any occupation on or after the fifteenth day of December next before the passing of the enabling Act, or, in the case of land acquired compulsorily under a general Act without the authority of an order, next before the date of the application to the Local Government Board under this schedule, for their approval of or decision with respect to a housing scheme, shall be taken into consideration.

(2) The housing scheme shall make provision for the accommodation of such number of persons of the working class as is, in the opinion of the Local Government Board, taking into account all the circumstances, required, but that number shall not exceed the aggregate number of persons of the working class displaced ; and in calculating that number the Local Government Board shall take into consideration not only the persons of the working class who are occupying the working-men's dwellings which the undertakers have power to take, but also any persons of the working class who, in the opinion of the Local Government Board, have been displaced within the previous five years in view of the acquisition of land by the undertakers.

(3) Provision may be made by the housing scheme for giving undertakers who are a local authority, or who have not sufficient powers for the purpose, power for the purpose of the scheme to appropriate land or to acquire land, either by agreement or compulsorily under the authority of a Provisional Order, and for giving any local authority power to erect dwellings on land so appropriated or acquired by them, and to sell or dispose of any such dwellings, and to raise money

for the purpose of the scheme as for the purposes of Part III. of the principal Act, and for regulating the application of any money arising from the sale or disposal of the dwellings ; and any provisions so made shall have effect as if they had been enacted in an Act of Parliament.

(4) The housing scheme shall provide that any lands acquired under that scheme shall, for a period of twenty-five years from the date of the scheme, be appropriated for the purpose of dwellings for persons of the working class, except so far as the Local Government Board dispense with that appropriation ; and every conveyance, demise, or lease of any such land shall be endorsed with notice of this provision, and the Local Government Board may require the insertion in the scheme of any provisions requiring a certain standard of dwelling-house to be erected under the scheme, or any conditions to be complied with as to the mode in which the dwelling-houses are to be erected.

(5) If the Local Government Board do not hold a local inquiry with reference to a housing scheme, they shall, before approving the scheme, send a copy of the draft scheme to every local authority, and shall consider any representation made within the time fixed by the Board by any such authority.

(6) The Local Government Board may, as a condition of their approval of a housing scheme, require that the new dwellings under the scheme, or some part of them, shall be completed and fit for occupation before possession is taken of any working-men's dwellings under the enabling Act.

(7) Before approving any scheme the Local Government Board may if they think fit require the undertakers to give such security as the Board consider proper for carrying the scheme into effect.

(8) The Local Government Board may hold such inquiries as they think fit for the purpose of their duties under this schedule, and subsections one and five of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply for the purpose, and where the undertakers are not a local authority shall be applicable as if they were such an authority.

(9) If the undertakers enter on any working-men's dwelling in contravention of the provisions of this schedule, or of any

conditions of approval of the housing scheme made by the Local Government Board, they shall be liable to a penalty not exceeding five hundred pounds in respect of every such dwelling :

Any such penalty shall be recoverable by the Local Government Board by action in the High Court, and shall be carried to and form part of the Consolidated Fund.

(10) If the undertakers fail to carry out any provision of the housing scheme, the Local Government Board may make such order as they think necessary or proper for the purpose of compelling them to carry out that provision, and any such order may be enforced by mandamus.

(11) The Local Government Board may, on the application of the undertakers, modify any housing scheme which has been approved by them under this Schedule, and any modifications so made shall take effect as part of the scheme.

(12) For the purposes of this Schedule—

(*a*) The expression "undertakers" means any authority, company, or person who are acquiring land compulsorily or by agreement under any local Act or Provisional Order or order having the effect of an Act, or are acquiring land compulsorily under any general Act :

(*b*) The expression "enabling Act" means any Act of Parliament or Order under which the land is acquired :

(*c*) The expression "local authority" means the council of any administrative county and the district council of any county district, or, in London, the council of any metropolitan borough, in which in any case any houses in respect of which the re-housing scheme is made are situated, or in the case of the city the common council :

(*d*) The expression "dwelling" or "house" means any house or part of a house occupied as a separate dwelling :

(*e*) The expression "working class" includes mechanics, artisans, labourers, and others working for wages ;

H.W. C. Act, 1903. Section 17.

hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them.

(54,930) [11*th January*, 1910.]

APPENDIX A.

HOUSING ACTS: FORMS OF NOTICES, ETC.

To the several Local Authorities

in ENGLAND and WALES for the purposes of Part I. of the Housing, Town Planning, etc., Act, 1909;—

And to all others whom it may concern.

WHEREAS by Section 41 of the Housing, Town Planning, etc., Act, 1909, it is enacted as follows:—

> The Local Government Board may by order prescribe the form of any notice, advertisement, or other document, to be used in connection with the powers and duties of a local authority or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable;

And whereas, by virtue of Section 51 of the Housing, Town Planning, etc., Act, 1909, in Part I. of that Act the expression "Housing Acts" means the Housing of the Working Classes Act, 1890, and any Act amending that Act, including the Housing, Town Planning, etc., Act, 1909:

NOW THEREFORE, We, the Local Government Board, by this Order, do Prescribe the several Forms hereinafter set forth as the forms of certain notices and other documents to be used in connection with the powers and duties of a Local Authority under the Housing Acts.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 15 (2).

FORM No. 1.

Form of Notice by person authorized by the Local Authority before entry for the purpose of viewing the state and condition of a house to which Section 15 of the Housing, Town Planning, etc., Act, 1909, applies.

To [1] the [2]

of the house [3]

TAKE NOTICE that in pursuance of sub-section (2) of Section 15 of the Housing, Town Planning, etc., Act., 1909, I, [4]
being a person duly authorized in writing by the [5]
intend, on the † day of 19 ,
at any time between the hours of § in the forenoon and in the afternoon, to enter the above-mentioned house for the purpose of viewing the state and condition thereof.

Dated this day of , 19 .

Signature.....
Description..... } of person authorized to enter.
Residence or Place of Business.....

Directions for filling up this Form.

Insert—

[1] The name and description, where known, of Tenant *or* Occupier.

[2] "Tenant" *or* "Occupier."

[3] Such a description of the house as may be sufficient for its identification.

[4] Name and description of person authorized by the Local Authority to enter.

[5] Description of the Local Authority.

† *Twenty-four hours' notice must be given.*

§ *Entry must be at reasonable times of the day.*

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 15 (3).

FORM No. 2.

Form of Notice requiring landlord to execute works in the case of a house to which Section 15 of the Housing, Town Planning, etc., Act, 1909, applies.

To [1] , the landlord of the house [2]

TAKE NOTICE:—

THAT it appears to the [3]
that the undertaking implied by virtue of Section 15 of the Housing, Town Planning, etc., Act, 1909, to the effect that the above-mentioned house to which that Section applies shall be kept by you in all respects reasonably fit for human habitation, has not been complied with;

AND THAT, in pursuance of sub-section (3) of the said Section, the said [3] do hereby require you within a period of † days, ending on the day of , One thousand nine hundred

and , to execute the works herein specified as being necessary to make the said house in all respects reasonably fit for human habitation, that is to say, the several works hereinafter set forth, namely [4]—

Dated this day of , 19 .

Signature of Clerk of Local Authority .....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Landlord.

[2] Such a description of the house as may be sufficient for its identification.

[3] Description of the Local Authority.

[4] Description of works to be executed.

† *A reasonable time, not being less than twenty-one days, must be specified.*

NOTE.

By subsection (4) of Section 15 of the Housing, Town Planning, etc., Act, 1909, it is provided that—

> Within twenty-one days after the receipt of such notice [*i.e.*, a written notice by the local authority to the landlord pursuant to Section 15 (3) the landlord may by written notice to the local authority declare his intention of closing the house for human habitation, and thereupon a closing order shall be deemed to have become operative in respect of such house.

Subsection (5) of that Section is in these terms—

> If the notice given by the local authority is not complied with and if the landlord has not given the notice mentioned in the immediately preceding subsection, the authority may, at the expiration of the time specified in the notice given by them to the landlord, do the work required to be done and recover the expenses incurred by them in so doing from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts, or, if they think fit, the authority may by order declare any such expenses to be payable by annual instalments within a period not exceeding that of the interest of the landlord in the house, nor in any case five years, with interest at a rate not exceeding five pounds per cent. per annum, until the whole amount is paid, and any such instalments or interest or any part thereof may be recovered from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts.

With respect to appeals, subsection (6) of the same Section enacts as follows :—

> A landlord may appeal to the Local Government Board against any notice requiring him to execute works under this section, and against any demand for the recovery of expenses from him under this section or order made with respect to those expenses under this section by the authority, by giving notice of appeal to the Board within twenty-one days after the notice is received, or the demand or order is made, as the case may be, and no proceedings shall be taken in respect of such notice requiring works, order, or demand, whilst the appeal is pending.

And Section 39 contains the following provisions—

(1) The procedure on any appeal under this Part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(*b*) The rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment, as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the precedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 15 (4).

FORM No. 3.

Form of Notice declaring intention of Landlord to close for Human Habitation a house to which Section 15 of the Housing, Town Planning, etc., Act, 1909, applies.

To the [1]

WHEREAS by a notice dated the day

of , 19 , the Local Authority in pursuance of subsection

(3) of Section 15 of the Housing, Town Planning, etc., Act, 1909, have required the landlord of the house [2]
execute, within the time specified in that notice, such works as are specified in the said notice as being necessary to make the said house in all respects reasonably fit for human habitation:

NOW THEREFORE, I, the landlord, do by this Notice declare my intention of closing the said house for human habitation.

As witness my hand this day of , 19 .

Signature.....
Residence or Place of Business .....
Description..... } of Landlord.

Directions for filling up this Form.

Insert—

[1] Description of the Local Authority.

[2] Such a description of the house as may be sufficient for its identification.

NOTE.

By subsection (4) of Section 15 of the Housing, Town Planning, etc. Act, 1909, it is provided that within twenty-one days after the receipt of the notice of the local authority in pursuance of subsection (3) of that Section, the landlord may by written notice to the local authority declare his intention of closing the house for human habitation, and thereupon a closing order shall be deemed to have become operative in respect of such house.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 15 (5).

FORM No. 4.

Form of Order declaring Expenses incurred by the Local Authority in the case of a house to which Section 15 of the Housing, Town Planning, etc., Act, 1909, applies to be payable by Annual Instalments.

To [1] , the landlord of the house [2]

WHEREAS by a notice dated the day of 19 , We, the [3]
in pursuance of subsection (3) of Section 15 of the Housing, Town Planning, etc., Act, 1909, have required the landlord of the above-mentioned house to execute, within the time specified in that notice, the works specified in the said notice as being necessary to make the said house in all respects reasonably fit for human habitation;

AND WHEREAS the said notice has not been complied with and the landlord has not given in pursuance of subsection (4) of the said Section a notice declaring his intention of closing the said house for human habitation;

AND WHEREAS We, the said [3]
in pursuance of sub-section (5) of the same Section have done the work required to be done, and have incurred in so doing expenses amounting to the sum of £ : : :

NOW THEREFORE We, the said [3]
do, by this Our Order, declare that the said expenses amounting to the sum of £ : : shall be payable by annual instalments within a period not exceeding † years, with interest at the rate of § pounds per cent. per annum, until the whole amount is paid.

Dated this day of , 19 .

(*To be sealed with the common seal of the Local Authority.*)

Signature of Clerk of Local Authority .....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Landlord.

[2] Such a description of the house as may be sufficient for its identification.

[3] Description of the Local Authority.

† *The period to be specified must not exceed that of the interest of the landlord in the house, nor in any case five years.*

§ *The rate of interest must not exceed five pounds per cent. per annum.*

NOTE.

By subsection (5) of Section 15 of the Housing, Town Planning, etc., Act, 1909, it is provided that any instalments or interest or any part of any instalments or interest under an order of the local authority declaring their expenses to be payable by annual instalments may be recovered from the landlord as a civil debt in manner provided by the Summary Jurisdiction Acts.

With respect to appeals, subsection (6) of the same Section enacts as follows :—

> A landlord may appeal to the Local Government Board against any notice requiring him to execute works under this section, and against any demand for the recovery of expenses from him under this section or order made with respect to those expenses under this section by the authority, by giving notice of appeal to the Board within twenty-one days after the notice is received, or the demand or order is made, as the case may be, and no proceedings shall be taken in respect of such notice requiring works, order, or demand whilst the appeal is pending.

And Section 39 contains the following provisions :—

> (1) The procedure on any appeal under this Part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that the copies may be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 17 (2).

FORM No. 5.

Form of Closing Order.

To [1] , owner of the dwelling-house [2]

WHEREAS under subsection (2) of Section 17 of the Housing, Town Planning, etc., Act, 1909, it is the duty of the Local Authority if, on the representation of the Medical Officer of Health, or of any other Officer of the Local Authority, or other information given, any dwelling-house appears to the Local Authority to be in a state so dangerous or injurious to health as to be unfit for human habitation, to make a Closing Order, that is to say, an Order prohibiting the use of the dwelling-house for human habitation until in the judgment of the Local Authority the dwelling-house is rendered fit for that purpose;

AND WHEREAS it appears to the [3]

on the ,

that the above-mentioned dwelling-house is in a state so dangerous or injurious to health as to be unfit for human habitation:

NOW THEREFORE, We, the said in pursuance of subsection (2) of Section 17 of the Housing, Town Planning, etc., Act, 1909, do, by this Our Order, prohibit the use of the said dwelling-house for human habitation, until, in Our judgment, it is rendered fit for that purpose.

Dated this day of , 19 .

(*To be sealed with the common seal of the Local Authority.*)

Signature of Clerk of Local Authority.....

Directions for filling up and adapting this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

[4] " Representation of the Medical Officer of Health " *or* " representation of the (*specify the Officer*," *or* " on information given " (*specify the nature and effect*).

NOTE.

By subsection (3) of Section 17 of the Housing, Town Planning, etc., Act, 1909, it is provided that—

> Notice of a closing order shall be forthwith served on every owner of the dwelling-house in respect of which it is made, and any owner aggrieved by the order may appeal to the Local Government Board by giving notice of appeal to the Board within fourteen days after the order is served upon him.

As regards the definition of " owner," the effect of Section 49 (2. is to substitute for the definition of owner in Section 29 in Part II) of the Housing of the Working Classes Act, 1890, as applied by Section 47 of the Act of 1909, the following definition—

> " The expression ' owner ' in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgages of any premises required to be dealt with under this Part of this Act, except persons holding or entitled to the rents and profits of such premises under a lease the original term whereof is less than twenty-one years."

With respect to appeals, Section 39 contains the following provisions—

> (1) The procedure on any appeal under this Part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.
>
> Provided that—
>
> (*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the

High Court, state in the form of a special case for the opinion of the court, any question of law arising in the course of the appeal; and

(*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 17 (4).

FORM No. 6.

Form of Notice of Closing Order which has become Operative.

To [1] , occupying tenant of the dwelling-house [2]

TAKE NOTICE:—

THAT on the day of One thousand nine hundred and , [3] in pursuance of the Housing, Town Planning, etc., Act, 1909, made a Closing Order prohibiting the use for human habitation of the above-mentioned dwelling-house until in the judgment of the Local Authority the dwelling-house is rendered fit for that purpose;

AND THAT the Closing Order has become operative:

AND ALSO THAT in pursuance of subsection (4) of Section 17 of the Housing, Town Planning, etc., Act, 1909, within † days after the service of this Notice the said Closing Order must be obeyed by you, and you and your family must cease to inhabit the said dwelling-house.

Dated this day of , 19 .

Signature of Clerk of Local Authority .....

Directions for filling up this Form.

Insert—

[1] Name of Occupying Tenant.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

† *The period must be not less than fourteen days after the service of the notice.*

NOTE.

By subsection (4) of Section 17 of the Housing, Town Planning, etc., Act, 1909, it is enacted as follows:—

> Where a closing order has become operative, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house in respect of which the order is made, and, within such period as is specified in the notice, not being less than fourteen days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable on summary conviction to be ordered to quit the dwelling-house within such time as may be specified in the order.

Subsection (5) of the same Section is in these terms:—

> Unless the dwelling-house has been made unfit for habitation by the wilful act or default of the tenant or of any person for whom as between himself and the owner or landlord he is responsible, the local authority may make to every such tenant such reasonable allowance on account of his expense in removing as may be determined by the local authority with the consent of the owner of the dwelling-house, or, if the owner of the dwelling-house fails to consent to the sum determined by the local authority, as may be fixed by a court of summary jurisdiction, and the amount of the said allowance shall be recoverable by the local authority from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

Section 17 (6).

FORM No. 7.

Form of Order Determining Closing Order.

To [1] , owner of the dwelling-house [2]

WHEREAS on the day of , 19 , in pursuance of the Housing, Town Planning, etc., Act, 1909, a Closing Order was made by Us, the [3] , in respect of the above-mentioned dwelling-house, and by the said Closing Order, We, the said [3] prohibited the use of the said dwelling-house for human habitation until, in Our judgment, the dwelling-house should be rendered fit for that purpose;

AND WHEREAS We, the said [3]
are satisfied that the said dwelling-house has been rendered fit for human habitation:

NOW THEREFORE We, the said [3]
do hereby determine the Closing Order aforesaid.
Dated this day of , 19 .

(*To be sealed with the common seal of the Local Authority.*)

Signature of Clerk of Local Authority.....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 17 (6).

FORM No. 8.

Form of Refusal of Local Authority to Determine a Closing Order.

To [1] , owner of the dwelling house [2]

TAKE NOTICE that the [3] , having considered your application to Them to determine the Closing Order made by Them in pursuance of the Housing, Town Planning, etc., Act, 1909, on the day of , 19 , in respect of the above-mentioned dwelling-house, have this day refused to determine the said Closing Order.

Dated this day of , 19 .

Signature of Clerk of Local Authority.....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

NOTE.

Subsection (6) of Section 17 of the Housing, Town Planning, etc., Act, 1909, is in these terms—

> The local authority shall determine any closing order made by them if they are satisfied that the dwelling house, in respect of which the order has been made, has been rendered fit for human habitation.

If, on the application of any owner of a dwelling-house, the local authority refuse to determine a closing order, the owner may appeal to the Local Government Board by giving notice of appeal to the Board within fourteen days after the application is refused.

With respect to appeals, Section 39 enacts as follows—

(1) The procedure on any appeal under this Part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

Section 18 (1).

FORM No. 9.

Form of Notice of Time and Place at which the Question of the Demolition of a Dwelling house will be considered.

To [1] , owner of the dwelling-house [2]

WHEREAS on the day of , 19 , in pursuance of the Housing, Town Planning, etc., Act, 1909, a Closing Order was made by the [3] in respect of the above-mentioned dwelling-house, and the said Closing Order has remained operative for a period of three months:

TAKE NOTICE, that the question of the demolition of the said dwelling-house will be considered by the said [3] at on the † day of , 19 , at o'clock in the noon, when any owner of the said dwelling-house will be entitled to be heard.

Dated this day of , 19 .

Signature of Clerk of Local Authority .....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

† *The time must be not less than one month after the service of this notice.*

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 18 (2).

FORM No. 10.

Form of Order for Demolition of Dwelling-house.

To [1] , owner of the dwelling-house [2]

WHEREAS on the day of 19 , in pursuance of the Housing, Town Planning, etc., Act, 1909, a Closing Order was made by Us, the [3] in respect of the above-mentioned dwelling-house, and the said Closing Order has remained operative for a period of three months;

AND WHEREAS after compliance with the requirements of subsection (1) of Section 18 of the Housing, Town Planning, etc., Act, 1909, and upon consideration of the question of the demolition of the said dwelling-house, We, the said [3] are of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit:

NOW THEREFORE, We, the said [3] in pursuance of subsection (2) of Section 18 of the Housing, Town Planing, etc., Act, 1909, do order the demolition of the dwelling-house aforesaid.

Dated this day of , 19 .

(*To be sealed with the common seal of the Local Authority.*)

Signature of Clerk of Local Authority.....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business and description, where known, of Owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

NOTE.

Subsection (4) of section 18 of the Housing, Town Planning, etc., Act, 1909, is in these terms—

> Notice of an order for the demolition of a building shall be forthwith served on every owner of the building in respect of which it is made, and any owner aggrieved by the order may appeal to the Local Government Board by giving notice of appeal to the Board within twenty-one days after the order is served upon him.

With respect to appeals, Section 39 enacts as follows—

> (1) The procedure on any appeal under this Part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.
>
> Provided that—
>
> (*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and
>
> (*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.
>
> (2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.
>
> (3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 18 (2).

FORM No. 11.

Form of Order for Demolition of Building being or being part of a Dwelling-house.

To [1] , owner of the dwelling-house [2]

WHEREAS on the day of , 19 , in pursuance of the Housing, Town Planning, etc., Act, 1909, a Closing Order was made by Us, the [3] in respect of the above-mentioned dwelling-house, and the said Closing Order has remained operative for a period of three months;

AND WHEREAS after compliance with the requirements of subsection (1) of Section 18 of the Housing, Town Planning, etc., Act, 1909, and upon consideration of the question of the demolition of the said dwelling-house, We, the said [3] are of opinion that the continuance of the [4] is [5]

NOW THEREFORE We, the said [3] in pursuance of subsection (2) of Section 18 of the Housing, Town Planning, etc., Act, 1909, do order the demolition of the [6]

Dated this day of , 19 .

(*To be sealed with the common seal of the Local Authority.*)

Signature of Clerk of Local Authority .....

Directions for filling up and adapting this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

[4] "Said dwelling-house" *or* "part of the said dwelling-house," as the case may be, followed in the latter case by such a description of the part as may be sufficient for its identification.

[5] "A nuisance" *or* "dangerous or injurious to the health of the public," *or* "dangerous or injurious to the health of the inhabitants of the neighbouring dwelling-houses," as the case may be.

[6] "Said dwelling-house" *or* "said part of the said dwelling-house," as the case may be.

NOTE.

Subsection (4) of Section 18 of the Housing, Town Planning, etc., Act, 1909, is in these terms:—

(4) Notice of an order for the demolition of a building shall be forthwith served on every owner of the building in respect of which it is made, and any owner aggrieved by the order may appeal

to the Local Government Board by giving notice of appeal to the Board within twenty-one days after the order is served upon him.

With respect to appeals, Section 39 enacts as follows:—

(1) The procedure on any appeal under this Part [*i.e.*, Part I.] of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just

Provided that—

(*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals.

Rules determining the procedure on any such appeal have been made by the Local Government Board, and have been placed on sale, so that copies may be obtained either directly or through any bookseller, from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PART I.

SECTION 18 (3).

FORM No. 12.

Form of Order postponing Operation of Order for Demolition of Dwelling-house.

To [1] , owner of the dwelling-house [2]

WHEREAS on the day of , 19 ,
We, the [3]
in pursuance of the Housing, Town Planning, etc., Act, 1909, made an Order for the demolition of the above-mentioned dwelling-house;

AND WHEREAS [4] ,
an owner of the said dwelling-house, has undertaken to execute forthwith the works necessary to render the said dwelling-house fit for human habitation, and We, the said [3] ,
consider that the said dwelling-house can be so rendered fit for human habitation:

NOW THEREFORE We, the said [3]
in pursuance of subsection (3) of Section 18 of the Housing, Town Planning, etc., Act, 1909, do hereby postpone the operation of the said Order for a period of † from the date of the said Order.

Dated this day of , 19 .

(To be sealed with the common seal of the Local Authority.)

Signature of Clerk of Local Authority.....

Directions for filling up this Form.

Insert—

[1] Name, residence or place of business, and description, where known, of Owner.

[2] Such a description of the dwelling-house as may be sufficient for its identification.

[3] Description of the Local Authority.

[4] Name, residence or place of business, and description, where known, of the Owner who undertakes to execute the necessary works.

† *The time must be such time, not exceeding six months, as the Local Authority think sufficient for the purpose of giving the Owner an opportunity of executing the necessary works.*

Given under the Seal of Office of the Local Government Board, this Eleventh day of January, in the year One thousand nine hundred and ten.

[L.S.] JOHN BURNS,
President.

S. B. PROVIS,
Secretary.

Note as to Scotland.

A corresponding Order addressed to Local Authorities in Scotland was issued by the Local Government Board for Scotland, and is dated November 11, 1910.

APPENDIX B.

(54,931)

[11*th January*, 1910.]

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

RULES WITH REFERENCE TO APPEALS.

WHEREAS by Section 39 in Part I. of the Housing, Town Planning, etc., Act, 1909, it is enacted as follows :—

(1) The procedure on any appeal under this Part of this Act, including costs, to the Local Government Board shall be such as the Board may by rules determine, and on any such appeal the Board may make such order in the matter as they think equitable, and any order so made shall be binding and conclusive on all parties, and, where the appeal is against any notice, order, or apportionment given or made by the local authority, the notice, order, or apportionment may be confirmed, varied, or quashed, as the Board think just.

Provided that—

(*a*) the Local Government Board may at any stage of the proceedings on appeal, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the court any question of law arising in the course of the appeal; and

(*b*) the rules shall provide that the Local Government Board shall not dismiss any appeal without having first held a public local inquiry.

(2) Any notice, order, or apportionment as respects which an appeal to the Local Government Board is given under this Part of this Act shall not become operative, until either the time within which an appeal can be made under this Part of this Act has elapsed without an appeal being made, or, in case an appeal is made, the appeal is determined or abandoned, and no work shall be done or proceedings taken under any such notice, order, or apportionment, until it becomes operative.

(3) The Local Government Board may, before considering any appeal which may be made to them under this Part of this Act, require the appellant to deposit such sum to cover the costs of the appeal as may be fixed by the rules made by them with reference to appeals:

NOW THEREFORE, We, the Local Government Board, for the purpose of determining the procedure on any appeal under Part I. of the Housing, Town Planning, etc., Act, 1909, do hereby make the following Rules, that is to say—

RULE 1.—Every appeal to the Local Government Board shall be made to and be brought before the Local Government Board by means of a letter, or other representation in writing (herein-after referred to as a " statement of appeal ") which shall be addressed and posted, or shall be otherwise given, sent, or delivered to the Local Government Board at their office, and of which a copy shall, at the same time, be addressed and posted, or shall be otherwise given, sent, or delivered to the Local Authority at their office.

RULE 2.—Every statement of appeal shall be signed by or on behalf of every person (herein-after referred to as an " appellant ") who makes or who joins in making the appeal, or, where an appellant is a corporation, or an association or body of persons unincorporate, shall be signed by an officer of or other person described as duly authorized by the corporation, association, or body, and shall bear a date corresponding to that of the day on which the requisite signature is affixed to the statement of appeal.

RULE 3.—Every statement of appeal shall set forth in detail the grounds of the appeal, all material facts in relation to the description or position of every appellant as a party to the appeal, and to his interest in any dwelling-house or premises to which the appeal has reference, or to his interest in or to such other concern or association as he may have with any subject-matter of the appeal, and also all material facts in relation to any such proceeding by a Local Authority or by an officer of or person authorized by a Local Authority as affects the grounds of appeal, the appellant, the interest of the appellant in any dwelling-house or premises to which the appeal has reference, or the interest of the appellant in or such other concern or association as he may have with the subject-matter of the appeal.

RULE 4.—Every statement of appeal shall be accompanied by every such document as an appellant has in his possession or at his disposal, and is able to furnish, and as consists of, or comprises, or gives particulars of, any notice, order, demand, or apportionment relating to the grounds or subject-matter of the appeal, or otherwise relating to any material facts set forth in the appeal ; and shall show by appropriate particulars in the statement of appeal, or by an appropriate entry on any such document accompanying the statement of appeal, the date of service upon an appellant of the notice, order, demand, or apportionment.

RULE 5.—Where an appeal appears to the Local Government Board to require, for its due consideration, that information, other than such information as is set forth in the statement of appeal, or is supplied by means of any document accompanying the statement of appeal, or by means of any statement by or correspondence with an appellant or the Local Authority respecting the appeal, shall be furnished to the Local Government

Board, the requisite information shall, on the written request of the Local Government Board, be furnished by an appellant or by the Local Authority, as the case may be, in such manner, in such form, and within such time as the Local Government Board in writing specify.

RULE 6.—Where the Local Government Board on an appeal are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of the foregoing Rules, or for varying any such requirement, the Local Government Board may by a notification in writing to an appellant or to the Local Authority, as the case may be, give the necessary dispensation to the appellant or to the Local Authority, as the case may be, or may make and give effect to the necessary variation and to any incidents or consequences of that variation ; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation, an appellant or the Local Authority, as the case may be, shall comply in all respects with the condition or variation, and with any requirement of the notification by the Local Government Board, as if the condition, variation, or requirement formed part of the foregoing Rules.

RULE 7.—Where the Local Government Board, before considering an appeal, require an appellant to deposit a sum to cover the costs of the appeal, the sum shall be—

(*a*) In every case in which the Office of the Local Authority is at a distance not exceeding fifty miles from the Office of the Local Government Board—

Seven Pounds ; and

(*b*) In every other case—

Ten Pounds.

For the purposes of this Rule, the distance shall be measured by a straight line drawn on the third edition of the map of the Ordnance Survey on the scale of $\frac{1}{63360}$, or one mile to one inch, from the nearest point in one Office to the nearest point in the other Office.

RULE 8.—Except so far as this Rule otherwise provides and so far as regards any costs incurred by the Local Government Board in relation to a public local inquiry held in pursuance of these Rules, all costs of and incidental to an appeal shall, when incurred by an appellant or by the Local Authority, be borne by the appellant or by the Local Authority as the case may be : Provided that the Local Government Board may, by any Order made under subsection (1) of Section 39 of the Housing, Town Planning, etc., Act, 1909, direct by whom any such costs, when incurred by an appellant or by the Local Authority, shall be borne ; and that nothing in this Rule shall have effect in contravention or in derogation of any such direction.

RULE 9.—The Local Government Board shall not dismiss an appeal without having first held a public local inquiry.

Where the Local Government Board are required to hold a public local inquiry, and written notice of the time and place at which the inquiry will be held has been given by the Local Government Board to every appellant and to the Local Authority, a printed copy of the notice shall be posted by the Local Authority at every place specified in writing by the Local Government Board as necessary or suitable for the purpose.

Given under the Seal of Office of the Local Government Board, this Eleventh day of January, in the year One thousand nine hundred and ten.

[L.S.] JOHN BURNS,
President.

S. B. PROVIS,
Secretary.

APPENDIX C.

(55,373) [*3rd May*, 1910.]

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

PROCEDURE REGULATIONS.

To the several Local Authorities

in ENGLAND and WALES for the purposes of Part II. of the Housing, Town Planning, etc., Act, 1909;—

And to all others whom it may concern.

WHEREAS by Sections 54, 55 and 56 of the Housing, Town Planning, etc. Act, 1909 (herein-after referred to as "the Act of 1909"), which Sections are included in Part II. of the Act of 1909, it is enacted as follows:—

"54.—(1) A town planning scheme may be made in accordance "with the provisions of this Part of this Act as respects any land "which is in course of development or appears likely to be used "for building purposes, with the general object of securing proper "sanitary conditions, amenity, and convenience in connexion with "the laying out and use of the land, and of any neighbouring lands.

"(2) The Local Government Board may authorize a local "authority within the meaning of this Part of this Act to prepare "such a town planning scheme with reference to any land within "or in the neighbourhood of their area, if the authority satisfy "the Board that there is a primâ facie case for making such a "scheme, or may authorize a local authority to adopt, with or "without any modifications, any such scheme proposed by all "or any of the owners of any land with respect to which the "local authority might themselves have been authorized to pre-"pare a scheme.

"(3) Where it is made to appear to the Local Government "Board that a piece of land already built upon, or a piece of land "not likely to be used for building purposes, is so situated with "respect to any land likely to be used for building purposes "that it ought to be included in any town planning scheme made "with respect to the last-mentioned land, the Board may authorize "the preparation or adoption of a scheme including such piece "of land as aforesaid, and providing for the demolition or altera-"tion of any buildings thereon so far as may be necessary for "carrying the scheme into effect.

" (4) A town planning scheme prepared or adopted by a local " authority shall not have effect, unless it is approved by order of " the Local Government Board, and the Board may refuse to " approve any scheme except with such modifications and sub- " ject to such conditions as they think fit to impose :

" Provided that, before a town planning scheme is approved by " the Local Government Board, notice of their intention to do so " shall be published in the *London* or *Edinburgh Gazette*, as the " case may be, and, if within twenty-one days from the date of " such publication any person or authority interested objects " in the prescribed manner, the draft of the order shall be laid " before each House of Parliament for a period of not less than " thirty days during the session of Parliament, and, if either of " those Houses before the expiration of those thirty days presents " an address to His Majesty against the draft, or any part thereof, " no further proceedings shall be taken thereon, without pre- " judice to the making of any new draft scheme.

" (5) A town planning scheme, when approved by the Local " Government Board, shall have effect as if it were enacted in this " Act.

" (6) A town planning scheme may be varied or revoked by a " subsequent scheme prepared or adopted and approved in " accordance with this Part of this Act, and the Local Government " Board, on the application of the responsible authority, or of any " other person appearing to them to be interested, may by order " revoke a town planning scheme if they think that under the " special circumstances of the case the scheme should be so " revoked.

" (7) The expression ' land likely to be used for building " ' purposes ' shall include any land likely to be used as, or for the " purpose of providing, open spaces, roads, streets, parks, pleasure " or recreation grounds, or for the purpose of executing any work " upon or under the land incidental to a town planning scheme, " whether in the nature of a building work or not, and the decision " of the Local Government Board, whether land is likely to be used " for building purposes or not, shall be final.

" 55.—(1) The Local Government Board may prescribe a set of " general provisions (or separate sets of general provisions adapted " for areas of any special character) for carrying out the general " objects of town planning schemes, and in particular for dealing " with the matters set out in the Fourth Schedule to this Act, and " the general provisions, or set of general provisions appropriate to " the area for which a town planning scheme is made, shall take " effect as part of every scheme, except so far as provision is made " by the scheme as approved by the Board for the variation or " exclusion of any of those provisions.

" (2) Special provisions shall in addition be inserted in every " town planning scheme defining in such manner as may be pre- " scribed by regulations under this Part of this Act the area to " which the scheme is to apply, and the authority who are to be

" responsible for enforcing the observance of the scheme, and for " the execution of any works which under the scheme or this " Part of this Act are to be executed by a local authority (in this " Part of this Act referred to as the responsible authority), and " providing for any matters which may be dealt with by general " provisions, and otherwise supplementing, excluding, or varying " the general provisions, and also for dealing with any special " circumstances or contingencies for which adequate provision is " not made by the general provisions, and for suspending, so " far as necessary for the proper carrying out of the scheme, any " statutory enactments, byelaws, regulations, or other provisions, " under whatever authority made, which are in operation in the " area included in the scheme:

" Provided that, where the scheme contains provisions sus- " pending any enactment contained in a public general Act, the " scheme shall not come into force unless a draft thereof has been " laid before each House of Parliament for a period of not less than " forty days during the session of Parliament, and, if either of " those Houses before the expiration of those forty days presents " an Address to His Majesty against the proposed suspension no " further proceedings shall be taken on the draft, without pre- " judice to the making of any new scheme.

* * * * *

" 56.—(1) The Local Government Board may make regulations " for regulating generally the procedure to be adopted with " respect to applications for authority to prepare or adopt a town " planning scheme, the preparation of the scheme, obtaining the " approval of the Board to a scheme so prepared or adopted, and " any inquiries, reports, notices, or other matters required in " connexion with the preparation or adoption or the approval " of the scheme or preliminary thereto, or in relation to the " carrying out of the scheme or enforcing the observance of the " provisions thereof.

" (2) Provision shall be made by those regulations—

" (*a*) for securing co-operation on the part of the local " authority with the owners and other persons interested in the " land proposed to be included in the scheme at every stage " of the proceedings, by means of conferences and such other " means as may be provided by the regulations;

" (*b*) for securing that notice of the proposal to prepare or " adopt the scheme should be given at the earliest stage " possible to any council interested in the land; and

" (*c*) for dealing with the other matters mentioned in the " Fifth Schedule to this Act."

And whereas by subsection (1) of Section 65 of the Act of 1909, it is provided that for the purposes of Part II. of the Act of 1909 the expression " local authority " means the Council of any Borough or Urban or Rural District:

And whereas by subsection (1) of Section 66 of the Act of 1909 it is provided that Part II. of the Act of 1909 shall apply to the Administrative County of London, and that, as respects that County, the London County Council shall be the local authority :

And whereas the following are the matters mentioned in the Fifth Schedule to the Act of 1909, namely :—

1. Procedure anterior to and for the purpose of an application for authority to prepare or adopt a scheme :—

(*a*) Submission of plans and estimates.

(*b*) Publication of notices.

2. Procedure during, on, and after the preparation or adoption and before the approval of the scheme :—

(*a*) Submission to the Local Government Board of the proposed scheme, with plans and estimates.

(*b*) Notice of submission of proposed scheme to the Local Government Board.

(*c*) Hearing of objections and representations by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme.

(*d*) Publication of notice of intention to approve scheme and the lodging of objections thereto.

3. Procedure after the approval of the scheme :—

(*a*) Notice to be given of approval of scheme.

(*b*) Inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme.

4. Duty, at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme.

5, The details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, by this Order, make the following Regulations ; that is to say :—

PROCEDURE ANTERIOR TO AND FOR THE PURPOSE OF AN APPLICATION FOR AUTHORITY TO PREPARE OR ADOPT A SCHEME.

Notices of intention to apply for authority

ARTICLE I.—(*a*) At least two months before making an application to the Local Government Board (hereinafter referred to as "the Board") for authority to prepare a town planning scheme, or for authority to adopt a town planning scheme proposed by all or any of the owners of any land with respect to which the local

to prepare or adopt a scheme: Deposit of Map No. 1 showing land proposed to be included.

authority might themselves have been authorized to prepare a scheme, the local authority shall serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land proposed to be included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be effected by the proposed scheme, upon the Country Council, a notice of their intention to make such application. The local authority shall also give notice of their intention to make such application by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least two months before making the application.

(*b*) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than one month from the date on which the latest of the said notices is given, a map of the land proposed to be included in the scheme. The said map (to be marked and known as "Map No. 1") shall be on the scale of 25·344 inches to the mile, and shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week day during the said period. The local authority shall also make suitable provision for affording to any person inspecting the map any necessary explanation in regard thereto.

(*c*) The said notices shall describe the land proposed to be included in the scheme and shall state the place at which a map of the land is deposited and the period and times during which the same will be open for inspection by any person interested.

(*d*) A certified copy of Map No. 1 shall be furnished by the local authority to the council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised.

Special notice to councils interested [Section 56 (2) (*b*) of Act of 1909].

ARTICLE II.—With the view of securing that notice of the proposal to apply for authority to prepare or adopt a scheme in respect of any land shall be given at the earliest stage possible to any council interested in the land, the local authority, independently of the notices required to be given as aforesaid, shall, within seven days after they have decided to consider a proposal for authority to prepare or adopt a scheme in reference to any area of land, serve notice of their decision upon any council interested in the land.

Consideration by local authority of objections, etc. Conferences: Meeting of parties interested.

ARTICLE III.—The local authority before making an application to the Board for authority to prepare or adopt a scheme shall consider any objections or representations made to them in writing in reference to the proposed scheme whether by owners or other persons interested in the land proposed to be included in the scheme, or by owners or other persons interested in any lands in the neighbourhood of the land proposed to be included in the scheme which may be affected by the scheme, or by the council of

any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised, or by any other council who may be interested in or affected by the scheme; and shall endeavour, by conferences between the local authority or their officers and such owners, persons, or councils, and by any other means available, to secure the co-operation of such owners, persons, or councils in promoting the scheme.

The local authority shall arrange for at least one meeting being held, at which all such owners, persons, or councils as aforesaid shall be entitled to attend or be represented, for the purpose of considering the proposed scheme. Notice of the time and place fixed for such meeting shall be served by the local authority upon all such owners, persons, or councils so far as they can ascertain the same, not less than fourteen days before the time fixed for the meeting.

The Mayor (if the local authority are the Town Council of a borough) or the chairman of the council (if the local authority are the London County Council or an Urban or Rural District Council) shall be the president of the said meeting, or, in the event of the Mayor or chairman being unable or unwilling to act, any person appointed for the purpose by the local authority shall be the president, or in default of such appointment, the meeting shall choose some person present at the meeting to be president thereof. On opening the meeting the president, or a member or officer of the local authority, shall give such explanation of the proposed scheme as he thinks expedient.

Application to the Board to be by resolution: Map No. 2 to be prepared in connection with resolution.

ARTICLE IV.—(*a*) An application to the Board by a local authority for authority to prepare or adopt a scheme shall be made by a resolution of the local authority.

(*b*) The resolution shall define, by reference to a map prepared on a scale of not less than 25·344 inches to the mile (to be marked and known as "Map No. 2"), the land in reference to which it is desired to prepare or adopt the scheme, and shall state whether the land is entirely within the area of the local authority or wholly or partly within a neighbouring area. In addition to any other particulars required by these Regulations to be shown thereon the said map shall show clearly by means of boundary lines sharply defined in colour the area of the land included in the proposed scheme, distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority. If the area of the land includes any piece of land already built upon or any piece of land not likely to be used for building purposes, any such lands shall be indicated on the map by distinctive colours and any necessary reference notes, and there shall also be shown on the map in like manner the positions of any buildings which have been erected on the land or of any buildings which are in course of erection.

(*c*) A copy of the resolution certified by the Clerk to the local authority shall be transmitted without delay to the Board by the Clerk, with a covering letter, and accompanied by a statement

as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

Documents, etc., to accompany application: Map No. 3 to be prepared.

ARTICLE V.—The application to the Board shall be accompanied by: —

(*a*) The statutory declaration and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of Article I.

(*b*) Map No. 2 or a copy thereof duly certified by the Clerk to the local authority.

(*c*) A map on the scale of 1 inch to the mile (to be marked and known as "Map No. 3"), showing, by distinguishing colours or boundary lines in colour, the district of the local authority, the land included in the proposed scheme, and the area within a distance of five miles from any part of the district of the local authority:

Provided that, if the scheme is proposed to be made or adopted by the council of a rural district, it shall not be obligatory that the map shall extend to the whole of the rural district, but it shall extend to the contributory place or places therein in which any part of the land included in the scheme is comprised, and to the area within a distance of five miles from such place or places:

Provided also that, if in any case the land included in a scheme is wholly outside the district of the local authority, the map shall show at least the area within a distance of five miles from any part of such land.

(*d*) A copy of all objections made in writing in reference to the proposed scheme so far as the objections have not been withdrawn or removed.

(*e*) If the application relates to the adoption of a scheme proposed by owners, a copy of the scheme so proposed and a statement of any modifications which the local authority are of opinion should be made in the scheme.

Additional particulars to be shown on Map No. 2 in a case of preparation of scheme by local authority.

ARTICLE VI.—If the application relates to the preparation of a scheme by the local authority there shall be shown on Map No. 2 the lines and widths of the principal roads which the local authority propose shall be made as part of the scheme, the connexions of the proposed roads with existing roads, and the lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity. Any existing roads or ways which it would be necessary to stop up or divert shall also be indicated on the said map, and if the local authority contemplate that the scheme to be prepared shall provide for certain areas being used for the purpose of open spaces or for other special purposes those areas shall as far as possible be indicated on the said map.

ARTICLE VII.—If the application relates to the adoption of a scheme proposed by owners of land there shall be shown on Map No. 2 the lines and widths of all roads proposed as part of the scheme, the connexions of the proposed roads with existing roads, and the lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity. Any existing roads or ways which it is proposed to stop up or divert shall be indicated on the said map, which shall also indicate the areas proposed by the scheme to be allocated for the purpose of open spaces, private or public, or to be used for any other special purposes. The said map shall also show all such further particulars in relation to the scheme proposed to be adopted as are suitable for indication thereon, *e.g.*, any proposals as to lines of sewers, or of pipes or mains for the supply of water, gas, or electricity.

Additional particulars to be shown on Map No. 2 in a case of adoption of scheme by local authority.

ARTICLE VIII.—In connection with an application for authority to prepare or adopt a scheme, the local authority shall furnish the Board with a statement or statements giving the particulars and information hereinafter indicated :—

Information to be furnished to the Board in connection with all applications.

(*a*) A general description of the scheme including information as to the general character of the land proposed to be included in the scheme, the extent to which the scheme applies to land in course of development, the extent to which it applies to land likely to be used for building purposes, and, as regards the last-mentioned land, the grounds for considering that the land is likely to be so used.

(*b*) The reasons on which the local authority rely in support of their application.

(*c*) If the scheme includes land already built upon or land not likely to be used for building purposes, the reasons which, in the opinion of the local authority, render it necessary or desirable to include such lands in the scheme ; particulars of the buildings on the lands ; such information as the local authority may be in a position to give in regard to the extent to which it would be necessary to provide for the demolition or alteration of the buildings for the purpose of carrying the scheme into effect ; and, as regards any land not likely to be used for building purposes, the grounds on which it is considered that such land would not be so used.

(*d*) Information as to the arrangements in operation in the area of the local authority in regard to sewerage, drainage and sewage disposal, water supply and lighting, and the like information in regard to the area of any other local authority in which any part of the land included in the scheme is comprised, and also information to show to what extent the arrangements as to sewerage, drainage, and sewage disposal would be available or would require alteration or modification for the purpose of area included in the scheme. If any company, whether statutory or otherwise, is supplying or has power to supply water, gas, or electricity in the area included in the

scheme, it should be so stated and particulars given in regard thereto.

(*e*) If the area of the land included in the scheme is not wholly within the area of the local authority making the application, information shall be supplied as to the proposals in regard to the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under such scheme, or under Part II. of the Act of 1909, may have to be executed by a local authority.

(*f*) Information as to any monuments or ancient monuments, within the meaning of the Ancient Monuments Protection Acts, 1882 to 1900, situate within the area included in the scheme, and as to the manner in which they would be affected.

(*g*) If any land or property of any Government Department would be affected by the scheme, particulars in regard to any such property and as to the Government Departments concerned.

Additional information to be furnished to the Board in a case of adoption of scheme by local authority.

ARTICLE IX.—In connection with an application for authority to adopt a scheme, the local authority shall furnish the Board with a statement or statements giving the additional particulars and information hereinafter indicated :—

(*a*) The names and addresses of the owners, lessees, and occupiers of each parcel of the land included in the scheme, and the approximate extent of each such parcel.

(*b*) Information showing in what respects the proposals in the scheme would involve the suspension of any statutory enactments, byelaws, regulations or other provisions which are in operation in the area included in the scheme.

(*c*) Information as to the extent to which it may be contemplated or necessary under the scheme that land included in the scheme shall be acquired (1) by the local authority making the application or (2) by any other local authority.

(*d*) Definite information as to whether any of the owners by whom the scheme is proposed will, in the event of the scheme being adopted by the local authority and approved by the Board, claim compensation on the ground that his property would be injuriously affected by the making of the scheme ; and particulars of any information in the possession of the local authority in regard to the probability of any other person making a claim for compensation on that ground.

(*e*) If, in the opinion of the local authority, any property will be increased in value by the making of the proposed scheme, information as to such property and as to the estimated increase in value.

Estimate as to cost of scheme :

ARTICLE X.—(*a*) In connection with an application for authority to prepare or adopt a scheme the local authority shall state as nearly as may be practicable the estimated cost of carrying out

the scheme, so far as the cost is expected to be borne by (1) the local authority making the application, and (2) any other local authority. The local authority shall also furnish the Board with such information as they may require as to the manner in which the estimated cost is arrived at.

Information as to area, population, rates, debt, etc.

(*b*) Subject to the proviso hereinafter contained, the local authority shall also furnish a statement showing the following particulars with respect to the district of the local authority, that is to say:—

(i) the acreage;
(ii) the population according to the last census;
(iii) the rateable value for the purposes of the poor rate;
(iv) the amount in the pound of every rate levied during the three last preceding financial years;
(v) the amount of the balances of the outstanding loans contracted by the local authority and the sum included in such amount in respect of loans for sanitary purposes; and
(vi) the amount of the loans sanctioned but not raised though proposed to be raised, and the sum included in such amount in respect of loans for sanitary purposes:

Provided that if it is proposed that the cost of the scheme to be borne by the local authority shall be charged upon any contributory place or places in their district the particulars required under heads i, ii, iii and iv hereof shall be given with respect to such place or places only.

(*c*) If any part of the cost of the scheme is expected to be borne by a local authority other than the local authority making the application, the first-mentioned local authority shall make a statement showing in regard to their district the several particulars indicated in paragraph (*b*) of this Article, and shall supply the same to the last-mentioned local authority, who shall transmit it to the Board with the said application.

Notice by advertisement of application having been made to the Board.

ARTICLE XI.—When the local authority have transmitted to the Board an application for the approval of the Board to the preparation or adoption of a scheme, the local authority shall forthwith give notice of such application and of the date of the resolution making the application by advertisement in some newspaper or newspapers circulating in the area of the local authority.

PROCEDURE DURING, ON, AND AFTER THE PREPARATION OR ADOPTION AND BEFORE THE APPROVAL OF THE SCHEME.

Notices of authority having been given to prepare or adopt a

ARTICLE XII.—(*a*) When authority has been given by the Board to the preparation by a local authority of a scheme with reference to any land or to the adoption by a local authority, with or without modifications, of a scheme proposed by owners of land, the local authority shall forthwith serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land in

scheme, and of intention to prepare or adopt a scheme: Persons desiring to be heard to give notice to local authority.

reference to which authority to prepare or adopt a scheme has been so given, and upon the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be affected by the scheme, upon the County Council, a notice that such authority has been given and that a copy of the Order or instrument giving such authority may be inspected, and any necessary explanation or information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day pending the preparation or adoption of the scheme. They shall also give notice to the same effect by advertisement in some newspaper or newspapers circulating in the area of the local authority.

(*b*) If the land in reference to which authority to prepare or adopt a scheme has been given as aforesaid excludes any land in regard to which an application under Article IV. of these Regulations was made to the Board, the local authority shall serve notice of the exclusion of such land upon the owners or reputed owners, lessees or reputed lessees, and occupiers of such excluded land and upon the council of any borough or of any urban or rural district within which any part of the excluded land is comprised, and also, if any main road would or might have been affected by the inclusion of the excluded land, upon the County Council.

(*c*) The notices to be served on owners or other persons or to be given by advertisement under paragraph (*a*) of this Article shall also state that the local authority propose to prepare a scheme or, as the case may be, to adopt with or without modifications the scheme proposed by owners, and that any person interested or affected desiring to be heard in reference to such proposal, including any persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme, should give notice in writing to the Clerk to the local authority within twenty-one days from the date of the notice.

(*d*) The local authority shall make suitable provision for affording to any person interested or affected inspecting the Order or instrument of the Board giving authority to prepare or adopt a scheme any necessary explanation or information in regard thereto.

Consideration by local authority of objections, etc.

ARTICLE XIII.—In connection with the preparation or adoption of a scheme the local authority shall carefully consider all objections and representations made to them in writing by any persons or councils interested or affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme.

Preparation of scheme by local authority:

ARTICLE XIV.—When the local authority have fully considered and developed their proposals and have decided to prepare a scheme in regard to an area of land in respect of which they have been authorized to prepare a scheme, they shall cause to be printed

a draft scheme embodying their proposals and shall cause a map or, if the case so require, maps (to be marked and known as " Map No. 4 " or " Map No. 4 (A)," " Map No. 4 (B)," etc.) to be prepared on a scale of not less than 25·344 inches to the mile, showing clearly by means of boundary lines sharply defined in colour the area of the land included in the proposed scheme distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority, and also showing thereon all such particulars and details in relation to the proposed scheme as can conveniently be indicated thereon by the aid of reference letters or numbers, descriptive notes, distinguishing colours, or otherwise; and especially there shall be indicated and distinguished on the said map or maps:— Draft scheme to be printed and Map No. 4 to be prepared showing details of proposals.

Existing main roads;
Roads repairable by the inhabitants at large;
Roads or footways over which the public have a right of way;
Roads on which tramways or light railways (*a*) have been constructed or (*b*) are authorized to be constructed;
Roads which the local authority propose shall be made as part of the scheme, indicating the widths thereof and any proposals as to the parts thereof to be appropriated or set apart for special purposes, and the connexions of such roads with existing roads;
Roads or ways which it is proposed to stop up or divert;
Land already built upon;
Land not likely to be used for building purposes;
Land proposed to be allocated for use as open spaces, (*a*) private or (*b*) public;
Land to be used for any other purposes, including, *e.g.*, buildings for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise, indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land;
Land to be acquired by the local authority for any purpose;
Lines of any existing sewers or any existing pipes or mains for the supply of water, gas or electricity.
Proposals as to lines of sewers or of pipes or mains for supply of water, gas or electricity.

ARTICLE XV.—When the local authority have fully considered the scheme proposed by owners in respect of an area of land in regard to which the local authority have been authorized to adopt a scheme with or without modifications and have decided to adopt the same with or without modifications, they shall cause to be printed a copy of the scheme proposed by owners, and shall prepare and cause to be printed a memorandum of all modifications which they propose should be made in such scheme and shall obtain from the owners or shall themselves provide a map or maps Adoption of scheme by local authority: Scheme of owners to be printed and also memorandum of any

modifications proposed and Map No. 4 to be prepared showing details of proposals.

(to be marked and known as "Map No. 4" or "Map No. 4 (A)," "Map No. 4 (B)," etc.) on a scale of not less than 25·344 inches to the mile, showing thereon all such particulars and details as are required to be shown on the map or maps referred to in Article XIV. of these Regulations.

Notices of scheme prepared or of scheme intended to be adopted by local authority: Deposit of draft scheme, etc., and of Map No. 4 for inspection.

ARTICLE XVI.—(*a*) At least one month before deciding upon the scheme to be submitted to the Board for approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority, the local authority shall serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is or may be affected by the scheme, upon the County Council, a notice that a draft scheme has been prepared by the local authority or (as the case may be) that the local authority intend to adopt a scheme proposed by owners, and that it is proposed to submit the same, with or without modifications, to the Board for approval; and shall also give notice of such proposal by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least one month before deciding upon the scheme to be submitted to the Board.

(*b*) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than twenty-one days from the date on which the latest of the said notices is given, the draft scheme and the map or maps referred to in Article XIV. of these Regulations or (as the case may be) the scheme and memorandum and the map or maps referred to in Article XV. of these Regulations, and the same shall be open for inspection by any persons interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any such person inspecting the said documents and maps any necessary explanation or information in regard thereto.

(*c*) The said notices shall describe the land proposed to be included in the scheme, and shall state the place at which the documents and maps referred to in paragraph (*b*) of this Article are deposited and the period and times during which the same will be open for inspection by any persons interested or affected. The notices shall state that the local authority will be prepared to consider any objections or representations which may be made to them in writing during the said period, and the notice to be given by advertisement shall also state that the local authority will be prepared to consider any objections or representations made in writing by any persons affected, including any persons representing any architectural or archæological society or otherwise interested in the amenity of the proposed scheme.

Application of Article III. of Regulations.

ARTICLE XVII.—Article III. of these Regulations shall apply also in regard to procedure before the local authority decide upon the scheme to be submitted to the Board for approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority.

Making or adoption of scheme to be by Order of local authority and Map No. 5 to be sealed in connection with the Order.

ARTICLE XVIII.—When the local authority have decided upon the scheme to be submitted to the Board for their approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority, they shall make an Order under their seal, authenticated by the signature of their Clerk or deputy Clerk, making the scheme, or (as the case may be) adopting the scheme proposed by owners with such modifications as may have been decided upon by the local authority.

A map or, if the case so require, maps prepared in the manner and containing the particulars and details required by Article XIV. of these Regulations, but to be marked and known as "Map No. 5" or "Map No. 5 (A)," "Map No. 5 (B)," etc., shall be sealed with the seal of the local authority in connection with the Order:

Provided that if the map or maps required by this Article to be prepared and sealed in connection with the Order would be identical in all respects with the map or maps prepared in accordance with Article XIV. or (as the case may be) Article XV. of these Regulations, the last-mentioned map or maps may, if the local authority think fit, be used for the purposes of this Article, but if so used they shall also be marked as indicated in this Article as well as in the manner required by Article XIV. or Article XV.

Application to the Board to approve scheme to be by resolution.

ARTICLE XIX.—An application to the Board to approve the scheme as made or adopted by the local authority by an Order in pursuance of Article XVIII. of these Regulations shall be made by a resolution of the local authority; and a copy of the resolution, certified by the clerk to the local authority, shall be transmitted without delay to the Board by the clerk, with a covering letter, and accompanied by a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

Documents, etc., to accompany application for approval of a scheme: Map No. 6 and Map No. 7 to be prepared.

ARTICLE XX.—When the local authority transmit to the Board the resolution of the local authority requesting the approval of the Board to the scheme as made or adopted by the local authority, they shall transmit to the Board:—

(*a*) The statutory declarations and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of Articles XII. and XVI.

(*b*) A sealed copy and three other copies of the Order of the

local authority containing the scheme as made or adopted by them, and a certified copy of every map referred to in the Order.

(*c*) A map on the scale of 6 inches to the mile to be marked and known as "Map No. 6," showing, by distinguishing colours or boundary lines in colour, the district of the local authority and the land included in the scheme :

Provided that, if the scheme is made or adopted by the council of a rural district, it shall not be obligatory that the map shall extend to the whole of the rural district but it shall extend to the contributory place or places therein in which any part of the land included in the scheme is comprised :

Provided also that, if in any case the land included in a scheme is wholly outside the district of the local authority, the map shall show all the area intervening between that land and the district of the local authority.

There shall also be shown on the map by some distinctive colours and any necessary reference notes all recreation grounds or public open spaces and public elementary schools in the area required to be shown on the map, and also the buildings which have been erected in that area up to the time when the map is sent to the Board, distinguishing so far as regards the land included in the scheme the buildings begun to be erected after the application was made to the Board for their approval to prepare or adopt the scheme.

(*d*) A map on a scale of not less than 25·344 inches to the mile, or a plan drawn to some larger scale (to be marked and known as "Map No. 7") showing the area of the land included in the scheme so divided as to indicate as nearly as may be the portions of such land belonging to different owners. The map or plan shall show as regards each portion of the land the name of the owner, or shall bear numbers having reference to a statement, to be annexed to the map or plan, showing the names of the owners.

(*e*) A copy of all objections made in writing in reference to the scheme so far as the objections have not been withdrawn or removed in the scheme as finally prepared or adopted by the local authority.

Information to be furnished to the Board in connection with an application for approval of a scheme.

ARTICLE XXI.—(*a*) The local authority shall furnish the Board with a statement or statements giving in regard to the scheme prepared or adopted by the local authority the particulars and information indicated in Articles VIII. and IX. of these Regulations so far as such particulars and information are not contained in the scheme.

The said particulars and information shall be given in regard to every scheme whether prepared by the local authority or adopted by them :

Provided that where the particulars and information furnished to the Board in accordance with Article VIII. or Article IX. or

any division of either of those Articles represent fully and accurately the particulars and information required by this Article in regard to the scheme as prepared or adopted by the local authority it shall be sufficient if a reference be made to the particulars and information previously furnished under Article VIII. or Article IX. or any division thereof.

(*b*) The local authority shall also furnish the Board with a statement or statements giving the particulars and information indicating below so far as they are not contained in the scheme :—

(i) Information to show whether the scheme admits of satisfactory provision being made in regard to the supply of water, gas, or electricity within the area included in the scheme.

(ii) Information in regard to any tramways or light railways constructed or authorized to be constructed in the area included in the scheme or in the immediate neighbourhood thereof.

(iii) In regard to any lands proposed to be acquired by (*a*) the local authority submitting the scheme or(*b*) any other local authority, any information available as to the probability of the lands being acquired by agreement.

(iv) Particulars in regard to any land included in the scheme which belongs to (*a*) the local authority submitting the scheme or (*b*) any other local authority ; the purposes for which and the authority under which such land was required or is held ; and also information as to any proposal in regard to its use for any other purposes under the scheme.

(v) If the local authority are of opinion that any property will be injuriously affected by the making of the scheme, within the meaning of the Act of 1909, information, so far as it is practicable to give the same, in regard to such property and as to the extent to which the local authority consider that it may be injuriously affected.

(vi) Detailed particulars of any works which are to be executed under the scheme by any person or local authority, so far as any such particulars are available.

(vii) If the scheme contains provisions suspending any enactment contained in a public general Act, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(viii) If the scheme contains provisions suspending any other statutory enactments, byelaws, regulations or other provisions which are in operation in the area included in the scheme, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(ix) Particulars of any land forming part of any common, open space, or allotment, within the meaning of section 73 of the Act of 1909, which is within the area included in the scheme, and of any part of that land which under the scheme is authorized to be acquired or appropriated to any other purpose, and particulars in regard to any land pro-

posed to be given in exchange for the land so to be acquired or appropriated ;

(x) Particulars of any land included in the scheme which is situate within the distance prescribed by Regulations made by the Board under Section 74 of the Act of 1909 from any of the royal palaces or parks.

Estimate and particulars as to cost of scheme : Information as to area, population, rates, debt, local Acts, orders, byelaws, etc.

ARTICLE XXII.—(*a*) In connection with an application to the Board for their approval of the scheme prepared or adopted by the local authority, information shall be furnished in regard to the estimated cost of carrying out the scheme, so far as the cost is to be borne by (1) the local authority making the application and (2) any other local authority. Separate particulars shall be given under the following heads :—

EXPENDITURE.

Purchase of land for open spaces.
Purchase of land for other purposes, specifying them.
Purchase of buildings.
Demolition or alteration of buildings.
Compensation in respect of property injuriously affected by the scheme.
Making or alteration of roads or ways.
Sewerage or drainage.
Cost of preparing the scheme.
Other purposes, specifying them.

RECEIPTS.

In respect of property increased in value.
From other sources, specifying them.

(*b*) If the statement or statements of particulars furnished under Article X. (*b*) or (*c*) of these Regulations has or have owing to lapse of time or other circumstances become inaccurate in any material respect, an amended statement or amended statements of such particulars shall be supplied.

(*c*) There shall also be supplied a list and a copy of all local Acts, Provisional Orders, byelaws, or regulations in force in the area of any local authority any part of whose district is included in the scheme ; and in the case of any part of a district other than that of the local authority making the application to the Board being so included, such list and copy shall be supplied by the local authority of that district to the local authority making the application, who shall transmit them to the Board.

Notice by advertisement of submission of scheme to the Board : Objections, etc., may be

ARTICLE XXIII.—When the local authority have submitted to the Board for their approval the scheme prepared or adopted by the local authority they shall forthwith give notice of such submission by advertisement in some newspaper or newspapers circulating in the area of the local authority. The notice shall also state that a copy of the scheme submitted to the Board may be inspected by persons affected, including persons representing architectural or archæological societies or otherwise interested

in the amenity of the scheme, at a place to be specified in the notice, without payment of any fee, at all reasonable hours (specifying the same) on any week-day within a period of one month from the date of the notice, and that any objections and representations by any such persons should be made in writing and addressed to the Board, at their Office, within the said period. A copy of the newspaper or newspapers containing such advertisement shall be forwarded to the Board by the Clerk to the local authority. made to the Board.

ARTICLE XXIV.—(*a*) If the Board propose to make any modifications in, or to attach any conditions to, the scheme submitted for their approval and transmit to the local authority a draft Order for approving the scheme with such modifications and conditions, the local authority shall within fourteen days after the receipt of the draft Order serve a copy of the draft Order upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is affected, upon the County Council, together with a notice that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their Office within a period of one month from the date of the serving of such draft Order and notice. Notices of modifications or conditions proposed by the Board: Objections, etc., may be made to the Board.

(*b*) The local authority shall also within fourteen days after the receipt of the draft Order give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board have caused a draft Order to be prepared for approving the scheme subject to modifications or conditions, that a copy of the draft Order may be inspected and any information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day during the period of one month from the date of the notice, and that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their Office within a period of one month from the date of the notice.

(*c*) The local authority shall furnish the Board within a period of one month from the receipt of the draft Order for approving the scheme with modifications or subject to conditions any objections or representations which they may desire to make in regard to the proposed modifications and conditions, and shall also within the same period transmit to the Board the statutory declaration and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of this Article.

ARTICLE XXV.—(*a*) When the Board have decided to approve the scheme submitted for their approval, with or without modifications, and notify the local authority of the decision and trans- Notice by advertisement of in-

tention of the Board to approve scheme and to publish notice of such intention in *London Gazette.*

mit to the local authority a draft Order for approving the scheme, the local authority shall within fourteen days after the receipt of such notification give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board intend to approve the scheme and propose, after the receipt by the Board of a copy of the newspaper or newspapers containing the advertisement, to publish forthwith in the *London Gazette,* in accordance with subsection (4) of Section 54 of the Act of 1909, a notice of such their intention, and that any person or authority interested and deciding to object to the scheme being approved should make his or their objection in the manner prescribed by Article XXVI. of these Regulations within twenty-one days from the date of such publication in the *London Gazette.*

(*b*) A copy of the newspaper or newspapers containing the advertisement shall be forwarded to the Board by the Clerk to the local authority immediately on the publication thereof.

(*c*) The local authority shall deposit at a place convenient for the purposes of inspection and shall keep deposited thereat the draft Order forwarded to them under this Article, for the full period of twenty-one days from the date of the said publication in the *London Gazette,* and the draft Order shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period.

Prescribing manner of objection to approval of scheme under and for the purposes of section 54 (4) of the Act of 1909.

ARTICLE XXVI.—When the notice of the intention of the Board to approve a scheme has been published in pursuance of subsection (4) of Section 54 of the Act of 1909, any person or authority interested and deciding to object to the scheme being approved shall make his or their objection in the following manner, that is to say :—

The objection shall be made to and be brought before the Board by means of a letter,or other representation in writing, which shall be addressed and posted, or shall be otherwise given, sent, or delivered to the Board at their Office. The letter or representation shall indicate clearly the scheme to which the objection is taken, and shall state fully in what respects the person or authority objecting claims or claim to be interested in the scheme and the grounds on which the objection is made.

PROCEDURE AFTER THE APPROVAL OF THE SCHEME.

Notices of approval of scheme by the Board.

ARTICLE XXVII.—(*a*) The local authority, on receipt of a copy of the Order of the Board approving a scheme, shall without delay first publish notice of the approval of the scheme by advertisement in some newspaper circulating in the area of the local authority. The notice shall state that the scheme has been approved, with or without modifications or conditions as the case may be, and that the Order of the Board giving the approval and a copy of any map or plan referred to in the Order or scheme may be inspected and any necessary explanation or information

in regard thereto may be obtained without payment of any fee at a place which shall be specified in the notice at all reasonable hours (specifying the same) on any week-day during the period of three months after the date of the Order. They shall also, not earlier than the second day after the first publication in a newspaper as aforesaid, serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is or may be affected by the scheme, upon the County Council, a copy of the Order approving the scheme and a notice that a copy of any map or plan referred to in the Order or scheme may be inspected, and any necessary explanation or information in regard thereto may be obtained as above mentioned.

(*b*) The local authority shall make suitable provision for affording any person inspecting the Order or scheme or any map or plan referred to therein within the said period any necessary explanation or information in regard thereto.

(*c*) The local authority shall within fourteen days after the receipt of the said Order transmit to the Board the statutory declaration and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of paragraph (*a*) of this Article.

GENERAL.

Notices, etc., to Board of Agriculture and Fisheries and to Commissioners of Works in certain cases.

ARTICLE XXVIII.—Wherever in these Regulations any notice or Order or scheme or draft Order or scheme is required to be served by the local authority upon any owner of land, the local authority shall send a like notice or Order or scheme or draft Order or scheme to the Board of Agriculture and Fisheries at their Office if in the scheme or proposed scheme there is any provision for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment within the meaning of Section 73 of the Act of 1909, and to the Commissioners of Works if any land included in the scheme or proposed scheme is situate within the distance prescribed by Regulations made by the Board under Section 74 of the Act of 1909 from any of the royal palaces or parks.

Notices, etc., to Board of Trade and to Light Railway Commissioners in certain cases.

ARTICLE XXIX.—Where in a scheme proposed to be prepared or adopted by a local authority any land is proposed to be included on which tramways or light railways are constructed or are authorized to be constructed, the local authority shall, when they give the notices required to be given under Article I. of these Regulations, also give notice to the Board of Trade and, as regards light railways, to the Light Railway Commissioners, of the intention of the local authority to apply for authority to prepare or (as the case may be) to adopt a scheme in regard to the said land, and shall from time to time thereafter furnish all such

information as the Board of Trade or the Light Railway Commissioners may require in regard to the proposals so far as any tramways or light railways or an authorized route of any tramways or light railways may be affected.

Service of notices.

ARTICLE XXX.—A notice required to be served in pursuance of these Regulations shall be served :—

(*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or

(*b*) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or

(*c*) by post addressed to the usual or last known place of abode of such person ; or

(*d*) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office.

Provided that if the owner of any land is not known to and after diligent inquiry cannot be found by the local authority then the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some conspicuous part of the land :

Provided also that a notice required to be given to an occupier may be addressed by the description of the " occupier " of the land or premises (describing it or them) in respect of which the notice is given, without further name or description.

Proofs of compliance with certain Regulations to be furnished by statutory declarations.

ARTICLE XXXI.—Proofs of compliance with the requirements of Articles I., XII., XVI., XXIV., and XXVII. of these Regulations as extended by Articles XXVIII. and XXIX. shall to the extent herein mentioned be furnished to the Board by statutory declarations made by the Clerk to the local authority or other person competent to make the same. The declarations shall in each case specify the manner in which the notices required by those Articles to be served upon owners, lessees, and occupiers, and upon any other local authority or council, were served, and the names of the persons so served, and shall also show that the other requiremens of those Articles as to notices required to be given and as to the deposit of maps or plans or any documents required to be deposited have been duly complied with. There shall also be annexed to the declarations as exhibits :—

In regard to Article I.—

(1) a copy of the form of notice served, (2) a copy of the map deposited for inspection, and (3) a copy of each newspaper containing the advertisement.

In regard to Article XII.—

(1) copies of the forms of notices served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XVI.—

(1) a copy of the form of notice served, (2) a copy of each newspaper containing the advertisement, (3) a statement showing the several parcels of land in respect of which notice was served upon each owner, lessee and occupier, (4) a copy of the draft scheme prepared by the local authority and deposited for inspection, or (4A) a copy of the scheme proposed by owners and deposited for inspection, together with a copy of any memorandum prepared by the local authority of modifications in such scheme and deposited with the scheme for inspection, and (5) copies of the maps deposited for inspection.

In regard to Article XXIV.—

(1) a copy of the form of notice served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XXVII.—

(1) a copy of the Order, (2) a copy of the form of notice served, and (3) a copy of the newspaper containing the advertisement.

Provisions as to maps.

ARTICLE XXXII.—(*a*) The maps required in pursuance of these Regulations shall be Ordnance Maps wherever such maps are published in respect of the district or area in relation to which the maps are required, shall be on a scale not less than that specified in each case, shall be mounted on linen and folded in book form, and shall have a scale properly drawn thereon.

(*b*) Any person interested in or affected by any scheme or proposed scheme shall be entitled to a copy of or extract from any map or plan required in pursuance of these Regulations, on payment of a reasonable fee to be determined by the local authority, and shall be entitled to inspect at all reasonable times any map or plan referred to in Article XXVII. of these Regulations. Any fees received by the local authority shall be carried to the credit of the fund liable to be charged with the expenses of the local authority in connexion with the scheme.

Local authority to furnish all information, etc., required by the Board.

ARTICLE XXXIII.—The local authority shall prepare and furnish to the Board all such maps, plans, sections, elevations and specifications, and all such particulars or information as the Board shall require to be prepared and furnished in connexion with any scheme or proposed scheme at any stage of the proceedings in relation thereto.

Board may consent to departures from Regulations.

ARTICLE XXXIV.—Where the Board are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of these Regulations, or for varying any such requirement, the Board may, by Order or otherwise as they may think fit, give the necessary dispensation, or may make and give effect to the necessary variation and to any incidents or consequences of that varia-

tion ; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation, the local authority or other authorities or persons, as the case may be, shall comply in all respects with the condition or variation and with any requirement of the Order or other writing or direction of the Board giving the dispensation or making the variation as if the condition, variation or requirement formed part of these Regulations :

Provided that the Board shall not exercise their powers under this Article in such a manner as to dispense with any provisions of these Regulations which are necessary to give effect to the requirements of the Act of 1909 or as so to vary any such provisions that they would cease to give effect to those requirements.

Interpretation.

ARTICLE XXXV.—In these Regulations "the Act of 1909" means the Housing, Town Planning, etc., Act, 1909.

Short title.

ARTICLE XXXVI.—These Regulations may be cited as the Town Planning Procedure Regulations (England and Wales), 1910.

Given under the Seal of Office of the Local Government Board, this Third day of May, in the year One thousand nine hundred and ten.

[L.S.] JOHN BURNS,
President.

H. C. MONRO,
Secretary.

Note as to Scotland.

A corresponding Order prescribing the Procedure Regulations in Scotland was issued by the Local Government Board for Scotland and is dated June 20, 1911.

CIRCULAR.

The following circular was issued with the foregoing order to the London County Council, town councils and urban and rural district councils.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.,
3rd May, 1910.

SIR,

I am directed by the Local Government Board to forward to you the enclosed copies of the Regulations which they have issued for regulating generally the procedure to be adopted with respect to the preparation or adoption of town planning schemes, and for making provision in regard to certain other matters in accordance with section 56 of the Housing, Town Planning, etc., Act, 1909. A provision is also included prescribing under and for the purposes of subsection (4) of section 54 of the Act the manner in

which any objection should be made to the approval of the Board being given to a scheme.

The Regulations are drawn so as to be of general application. They will extend on the one hand to schemes which relate to small areas or contain only proposals of a simple character and affecting few interests, and on the other hand to schemes which may deal with extensive areas and affect numerous ownerships and other interests and involve serious considerations of expense. It is probable that the circumstances of particular cases will be such as to require or justify some relaxation or alteration of the Regulations in their applications to the case, and the Board have, with a view to meeting any such case, included in Article 34 provisions which will enable them, subject to the proviso to that Article, to dispense with or vary any requirement of the Regulations where reasonable cause is shown.

In the absence of authority for departure from any provisions of the Regulations, great care should be taken to comply strictly with them, as any failure in this respect might involve considerable delay and expense.

In the Circular Letter which they addressed to town councils and urban and rural district councils on the 31st December, 1909, the Board drew attention to the importance of co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in a town planning scheme. The Board desire again to emphasize this point. Subsection (2) of section 56 of the Act enacts that provision shall be made by the Regulations "for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme at every stage of the proceedings, by means of conferences and such other means as may be provided by the Regulations." The Board have included provisions on this subject in the Regulations, which also contain provisions requiring notices to be given at various stages of the procedure to owners and other persons, including local authorities or companies, interested or affected, and facilities to be afforded to all such persons to place their views or objections before the local authority, or, at the later stage, the Board.

In a case in which the owners of land propose a scheme for the adoption of the local authority, the Board consider it very desirable that the local authority should, before applying to the Board for authority to adopt the scheme, obtain from the owners definite information or undertakings on the question of any compensation which might become payable in respect of property injuriously affected by the scheme in the event of its becoming operative, whether in respect of property of the owners proposing the scheme or of the property of any other person. Under section 58 (1) of the Act any compensation payable in accordance with the provisions of that section and section 59 would be payable by "the responsible authority" referred to in section 55 (2), that is to say, the authority who are to be responsible for enforcing the observance of the

scheme and for the execution of any works which under the scheme or Part II of the Act are to be executed by a local authority. In regard also to a scheme proposed to be prepared by a local authority, it appears to be a matter of the greatest importance that these provisions as to compensation should be carefully borne in mind from the earliest stage of the proceedings, and that, as in the case of the proposed adoption of a scheme, the local authority should endeavour to secure definite agreements with any person who may be affected by the proposals.

In regard to the provisions of section 58 above-mentioned the Board are aware that questions have arisen as to the meaning to be attached to the words " by the making of any [*or* a] town planning scheme " in subsections (1) and (3) of the section. The Board have no authority to determine the interpretation to be placed upon provisions in the Act, but they are advised that, in giving effect to the section, no loss in value or gain in value of the property affected which is not due solely to the making of the scheme can be taken into account. There will no doubt be exceptional cases, but as a general rule the loss or gain in value would seem to depend upon a comparison of the full value of the property immediately prior to and irrespective of the making of the scheme with the full value of the property immediately after the making of the scheme, regard being had to the provisions of section 59 of the Act.

In preparing the Regulations the Board have been desirous of limiting as far as possible the specific requirements to be complied with for the purpose of an application to the Board for authority to prepare or adopt a town planning scheme, and it does not appear to them that as a general rule it should be necessary for a local authority to incur much expense at this stage of the proceedings.

The full development of the details of a scheme might, the Board consider, be reserved until after the preliminary stage is passed, at all events in the case of a scheme which is being prepared by the local authority. In ordinary circumstances the Board would probably find it necessary or desirable to direct a local inquiry before giving the necessary authority to prepare or adopt a scheme, and the Board may here repeat what was stated in their Circular Letter of the 31st December, 1909, viz., that if it is thought that at any stage prior to the submission of a scheme for their approval the assistance or advice of any of the Board's experts might tend to facilitate agreements with owners concerned or to save labour or expense, the Board will be quite ready to arrange for such assistance or advice being given.

It will be observed that the Regulations require the preparation of maps of various stages of the proceedings in connexion with a scheme. In Article 18 of the Regulations express provision is made under which the maps prepared in accordance with Article 14 or Article 15 may be used for the purposes of Article 18 and be marked as required by that Article, but such user would only be permissible if the maps required under the later Article would be identical in

every respect with those previously prepared for the purposes of Article 14 or Article 15. This provision has been inserted with the view of saving the expense of preparing further maps, and the Board would not offer any objection to a similar course being followed, subject to similar conditions, as regards the use of Map No. 1 (required by Article 1 of the Regulations) in lieu of preparing a further map (Map No. 2) for the purpose of Article 4. It should be clearly understood, however, that a map which has been prepared and deposited to meet specific requirements of an Article of the Regulations should not be subsequently altered to meet the requirements of a subsequent Article.

It was suggested to the Board that provision should be made in the Regulations for definite schemes of colouring being adopted in the preparation of the maps required by the Regulations, so as to provide for uniformity of practice in regard to the colouring of all maps relating to town planning schemes under the Act. The Board have not regarded it as practicable to carry out this suggestion, but they think it would be desirable that, in preparing the maps required at the several stages of a scheme, the local authority should as far as possible follow the same scheme of colouring throughout all the maps so that, e.g., if a particular colour is used to indicate some special feature on Map No. 1, the same colour should be used to indicate the same feature on any map at a later stage of the proceedings.

Suggestions have been made that contour models of the areas proposed to be included in town planning schemes should be prepared. The Board have not considered it desirable to include any provision on this matter in the Regulations, and they are disposed to think that it would not as a general rule be expedient to incur the expense of preparing such models, and that it would be found in practice that plans with contour lines drawn or coloured thereon so as to show the variations in the levels of the land would meet adequately the necessities of the case.

Under section 54 (1) of the Act, read with section 55 and the Fourth Schedule and section 59 (2), it would be practicable to include in a town planning scheme provisions restricting the use of certain areas of land to specified purposes, and it will be seen that the Regulations recognize the possibility of provisions of this character. To what extent the power should be used will be a matter for very careful consideration in each case, and the provisions of sections 58 and 59 of the Act in regard to compensation should be borne in mind in connection with the matter. The Board refer to this point at the present time as they understand that some doubt has been expressed whether the Act authorizes the inclusion in a scheme of provisions such as are here referred to.

It will be observed that the present Regulations do not include provisions " in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof " [section 56 (1) of the Act], or as to " inquiries and reports as to the beginning and

the progress and completion of works, and other action under the scheme" [Fifth Schedule, 3 (b)]. The Board propose to defer the making of any Regulations under these heads until they are in a better position for determining the precise Regulations which may be desirable.

The Board think it desirable that local authorities and others concerned in the making of a town planning scheme should realize at the outset that a considerable period must of necessity elapse between the time of the inception of a scheme and its final approval. The necessity of giving effect to the clearly expressed intention of the Act in regard to affording persons interested or affected full opportunity of considering the proposals at all stages involves considerable delay, but the Board in settling the Regulations have made the periods for notices as short as possible, having due regard to the objects to be attained. So far as administrative action upon the part of the Board is concerned they will endeavour to expedite as much as is practicable the dealing with applications to them in regard to town planning schemes, but the careful consideration of a case in all its aspects and the arrangements for the holding of the necessary local inquiries must necessarily take a substantial amount of time.

The Regulations and this Circular will be placed on sale, so that copies can shortly be purchased from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.

I am, Sir,

Your obedient Servant,

H. C MONRO,

Secretary.

To

The Clerk to the London County Council

or

The Town Clerk

or

The Clerk to the Urban or Rural District Council.

APPENDIX D.

(55,475) [29*th July*, 1910.]

General Order : Medical Officers of Health : Duties.

COUNTIES OTHER THAN LONDON.

To The County Council

of every ADMINISTRATIVE COUNTY in England and Wales other than London ;—

And to all others whom it may concern.

WHEREAS it is enacted by subsection (2) of section 68 of the Housing, Town Planning, etc., Act, 1909 (herein-after referred to as " the Act of 1909 "), that the duties of a Medical Officer of Health of a County shall be such duties as may be prescribed by general Order of the Local Government Board and such other duties as may be assigned to him by the County Council ;

And whereas by virtue of section 70 of the Act of 1909 the above cited subsection does not apply to the Adminstrative County of London :

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, by this Order Prescribe the following duties as the duties of every Medical Officer of Health of a County other than the Adminstrative County of London ; that is to say :—

(1) The Medical Officer of Health of the County shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health in the County. For this purpose he shall visit the several County districts in the County as occasion may require, giving to the Medical Officer of Health of each County district prior notice of his visit, so far as this may be practicable.

(2) The Medical Officer of Health of the County shall from time to time inquire into and report upon the hospital accommodation available for the isolation of cases occurring in the County—

(*a*) of small-pox, and

(*b*) of other infectious diseases,

and upon any need for the provision of further hospital accommodation.

(3) The Medical Officer of Health of the County shall communicate to the Medical Officer of Health of a County district within the County any information which he may possess as to any danger to health threatening that district.

(4) The Medical Officer of Health of the County shall consult with the Medical Officers of Health of County districts within the County whenever the circumstances may render this desirable.

(5) If the annual or special reports of the Medical Officer of Health of a County district in the County shall not contain adequate information in regard to

(*a*) the vital statistics of the district.

(*b*) the sanitary circumstances and administration of the district, and

(*c*) the action taken in the district for putting in force the provisions of the Housing of the Working Classes Acts, 1890 to 1909,

the Medical Officer of Health of the County shall obtain from the Medical Officer of Health of the County district such further information on those matters as the circumstances may demand.

(6) The Medical Officer of Health of the County shall, when directed by Us, or by the County Council, or as occasion may require, make a Special Report to the County Council on any matter appertaining to his duties under this Order.

(7) The Medical Officer of Health of the County shall as soon as practicable after the 31st day of December in each year make an Annual Report to the County Council up to the end of December on the sanitary circumstances, the sanitary administration and the vital statistics of the County.

In addition to any other matters upon which the Medical Officer of Health may consider it desirable to report, his Annual Report shall contain the following sections :—

(*a*) A digest of all annual and special reports made by the Medical Officers of Health of all County districts within the County :

(*b*) a section as to the isolation hospital accommodation available for each County district and as to the steps which should be taken to remedy any deficiencies which may exist ;

(*c*) a section on the adminstration of the Housing of the Working Classes Acts, 1890 to 1909, within the County ;

(*d*) a section on the water supply of the several County districts within the County ;

(*e*) a section on the pollution of streams within the County and as to the steps for the prevention of pollution taken :—

(*i*) by the local authorities, and

(*ii*) by the County Council;

(*f*) a section on the administration within the County of the Midwives Act, 1902; and

(*g*) a section on the administration of the Sale of Food and Drugs Acts, 1875 to 1907, within that part of the County in which the County Council have jurisdiction for the purposes of those Acts.

(8) The Medical Officer of Health of the County shall send to Us two copies of his Annual Report and two copies of any Special Report; he shall also send one copy of his Annual Report to the Council of every County district in the County and shall send three copies of any Special Report to the Council of every such County district affected by the Special Report.

This Order may be cited as the County Medical Officers of Health (Duties) Order, 1910.

Given under the Seal of Office of the Local Government Board, this Twenty-ninth day of July, in the year One thousand nine hundred and ten.

JOHN BURNS,
President.

H. C. Monro,
Secretary.

CIRCULAR.

The following Circular was issued with the foregoing order to county councils except the London County Council.

DUTIES OF COUNTY MEDICAL OFFICERS (OF HEALTH).

Local Government Board,
Whitehall, S.W.,
29th July, 1910.

Sir,

I am directed by the Local Government Board to advert to section 68 of the Housing, Town Planning, etc., Act, 1909, which by subsection (1) requires every County Council to appoint a Medical Officer of Health, and to transmit to you the enclosed copies of a General Order which they have made under subsection (2) prescribing duties of a County Medical Officer of Health.

Paragraph (1) requires the Medical Officer of Health to inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health in the County, and for that purpose to visit the several districts in the County.

Paragraph (2) requires him to report on the isolation hospital

accommodation of the County and on the need for further accommodation.

Under paragraph (3) he is to communicate to the District Medical Officers of Health any information he may possess as to danger to health threatening their district. Paragraph (4) requires him to consult with the District Medical Officers of Health when circumstances render this desirable.

Paragraph (5) relates to the obtaining of information from the District Medical Officers of Health.

The Board contemplate that the information that the County Medical Officer of Health may require from the District Medical Officer of Health under section 69 (2) of the Act will, as a rule, be obtained from the periodical and special reports of the District Medical Officer of Health.

Paragraph (6) requires him to make special reports on any matter appertaining to his duties when required.

Paragraph (7) directs him to make an annual report on the sanitary circumstances and administration and vital statistics of the County and defines various subjects which shall be dealt with in that report, and Paragraph (8) prescribes his duty as to sending copies of his annual and special reports to the Local Government Board and to the Councils of the County Districts.

The Board have not included any provision requiring the Medical Officer of Health of the County to compile periodical lists of infectious disease. They have decided to require each District Medical Officer of Health to send to them, week by week, particulars of all cases which are notified in his district, and from these the Board will themselves compile lists, copies of which will be sent to the County Medical Officer of Health.

The Board have regarded any provision as to the co-ordination of the work of the School Medical Officer under the Education (Administrative Provisions) Act, 1907, with the work of the County Medical Officer of Health, as not immediately within the scope of the Order. They may say, however, that both they and the Board of Education consider that this co-ordination should be as close as possible, and that it can best be secured by the appointment of the same officer as County Medical Officer of Health and County School Medical Officer. The duty of serving as School Medical Officer is clearly within the scope of those "other duties" which, under the Act, may be assigned by the County Council to its Medical Officer of Health. Where the work of the two offices is more than can be discharged by one officer, the case should be met by the appointment of assistants, rather than by the appointment of separate and independent officers. In some instances it may be desirable that such additional assistance as is required in regard to school hygiene should be obtained by the appointment, as an Assistant School Medical Officer, of the Medical Officer of Health of a district or combination of districts in the County. The adoption of this course may enable the councils of the districts concerned to obtain

the advantage of the services of an officer who does not engage in private practice.

Under Paragraph (7) (*g*) of the Order it is the duty of the Medical Officer of Health to include in his Annual Report a section on the administration of the Sale of Food and Drugs Acts within the part of the County over which the County Council have jurisdiction. The Board are aware that in some counties the Medical Officer of Health is not at present directly concerned with the administration of these Acts, but in these cases it will be convenient if he can nevertheless incorporate in his report such information on the subject as may be supplied to him from the department of the County Council which deals with the question. The Board consider it desirable that the administration of these Acts should as a rule be directly under the supervision of the Medical Officer of Health, and that where this is not so, it should be carried on in consultation with him by the officer administering the Acts.

Subsection (7) of section 68 of the Act provides that a Medical Officer of Health appointed after the passing of the Act shall not engage in private practice, and shall not hold any other public appointment without the express written consent of the Board, and subsection (3) takes away the power of County Councils and District Councils under section 17 of the Local Government Act, 1888, to make arrangements to employ the same Medical Officer of Health. As indicated above, the Board are prepared to consent to the Medical Officer of Health holding also the office of School Medical Officer in the County, but they think it is generally undesirable that any other offices should be held by the County Medical Officer of Health. In regard to the remuneration of the Medical Officer of Health the Board's experience shows that it is desirable that in addition to his salary the officer should be repaid his actual travelling expenses and that he should be provided with adequate clerical assistance.

The Board need hardly point out that to secure the best interests of the county in the department of public health, co-operation between the County Medical Officer of Health and the District Medical Officers of Health is essential. The County Medical Officer of Health will look to the District Medical Officer of Health for detailed information as to his district and for assistance in his visits to the district. The Board have no doubt that this information and assistance will be willingly given by the District Medical Officers of Health, and also that the County Medical Officer of Health will be glad to help the District Medical Officers of Health with any expert or special knowledge and information to which he may have access.

I am, etc.,

H. C. MONRO,

Secretary.

To the Clerk to
the County Council.

APPENDIX E.

(55,578.) [*2nd September*, 1910.]

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

REGULATIONS UNDER SECTION 17 (1).

To the several Local Authorities

in ENGLAND and WALES for the purposes of Part II. of the Housing of the Working Classes Act, 1890 ;—

And to all others whom it may concern.

WHEREAS by subsection (1) of Section 17 of the Housing, Town Planning, etc., Act, 1909, it is enacted that it shall be the duty of every local authority within the meaning of Part II. of the Housing of the Working Classes Act, 1890 (herein-after referred to as " the local authority ") to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and that for that purpose it shall be the duty of the local authority, and of every officer of the local authority, to comply with such regulations and to keep such records as may be prescribed by the Local Government Board.

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, by this Order, prescribe the following Regulations ; that is to say :—

ARTICLE I.—(1) The local authority shall as early as practicable after the date of this Order take into consideration the provisions of subsection (1) of Section 17 of the Act of 1909, and shall determine the procedure to be adopted under these Regulations, to give effect to the requirements of that subsection in regard to the inspection of their district from time to time.

(2) The local authority shall as part of their procedure make provision for a thorough inspection to be carried out from time to time according to the varying needs or circumstances of the dwelling-houses or localities in the district of the local authority.

(3) The local authority shall cause to be prepared from time to time by the Medical Officer of Health, or by an Officer designated by them but acting under his direction and supervision, a list or lists of dwelling-houses the early inspection of which is, in the

opinion of the Medical Officer of Health, desirable. The list or lists may, if thought fit, relate to the dwelling-houses within a defined area of the district without specifying each house separately therein.

ARTICLE II.—The inspection under and for the purposes of subsection (1) of Section 17 of the Act of 1909 shall be made by the Medical Officer of Health, or by an Officer designated by the local authority but acting under his direction and supervision, and the Officer making inspection of any dwelling-house shall examine the state of the dwelling-house in relation to the following matters, namely :—

(1) The arrangements for preventing the contamination of the water supply.

(2) Closet accommodation.

(3) Drainage.

(4) The condition of the dwelling-house in regard to light, the free circulation of air, dampness, and cleanliness.

(5) The paving, drainage, and sanitary condition of any yard or outhouses belonging to or occupied with the dwelling-house.

(6) The arrangements for the deposit of refuse and ashes.

(7) The existence of any room which would in pursuance of subsection (7) of Section 17 of the Act of 1909 be a dwelling-house so dangerous or injurious to health as to be unfit for human habitation.

(8) Any defects in other matters which may tend to render the dwelling-house dangerous or injurious to the health of an inhabitant.

ARTICLE III.—Records of the inspection of dwelling-houses made under and for the purposes of subsection (1) of Section 17 of the Act of 1909 shall be prepared under the direction and supervision of the Medical Officer of Health, and shall be kept by the Officer of the local authority making the inspection or by some other Officer appointed or employed for the purpose by the local authority.

The records may be kept in a book or books or on separate sheets or cards, and shall contain information, under appropriate headings, as to :—

1. The situation of the dwelling-house, and its name or number,

2. The name of the Officer who made the inspection,

3. The date when the dwelling-house was inspected,

4. The date of the last previous inspection and a reference to the record thereof.

5. The state of the dwelling-house in regard to each of the matters referred to in Article II. of these Regulations,

6. Any action taken by the Medical Officer of Health, or other officer of the local authority, either independently or on the directions of the local authority.

7. The result of any action so taken,

8. Any further action which should be taken in respect of the dwelling-house.

ARTICLE IV.—The local authority shall, as far as may be necessary, take into consideration at each of their ordinary meetings the records kept in pursuance of Article III. of these Regulations, and shall give all such directions and take all such action within their powers as may be necessary or desirable in regard to any dwelling-house to which the records relate, and a note to any directions so given and the result of any action taken shall be added to the records.

ARTICLE V.—The Medical Officer of Health shall include in his Annual Report information and particulars in tabular form in regard to the number of dwelling-houses inspected under and for the purposes of Section 17 of the Act of 1909, the number of dwelling-houses which on inspection were considered to be in a state so dangerous or injurious to health as to be unfit for human habitation, the number of representations made to the local authority with a view to the making of closing orders, the number of closing orders made, the number of dwelling-houses the defects in which were remedied without the making of closing orders, the number of dwelling-houses which after the making of closing orders were put into a fit state for human habitation, and the general character of the defects found to exist. He shall also include any other information and particulars which he may consider desirable in regard to the work of inspection under the said Section.

ARTICLE VI.—The Medical Officer of Health and any other Officer of the local authority shall observe and execute all lawful orders and directions of the local authority in regard to or incidental to the inspection of the district of the local authority under and for the purposes of Section 17 of the Act of 1909, and the execution of these Regulations.

ARTICLE VII.—In these Regulations "the Act of 1909" means the Housing, Town Planning, etc., Act, 1909.

ARTICLE VIII.—These Regulations may be cited as the Housing (Inspection of District) Regulations, 1910.

Given under the Seal of Office of the Local Government Board, this Second day of September, in the year One [L.S.] thousand nine hundred and ten.

H. C. MONRO.
Secretary.

JOHN BURNS,
President.

Note as to Scotland.

A corresponding Order was issued by the Local Government Board for Scotland and is dated November 28, 1910.

CIRCULAR.

The following circular was issued with the foregoing order to town councils, councils of metropolitan boroughs, distri councils.

HOUSING (INSPECTION OF DISTRICT) REGULATIONS 1910.

LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.,
3rd September, 1910.

SIR,

I am directed by the Local Government Board to advert to section 17 (1) of the Housing, Town Planning, etc., Act, 1909, under which it is the duty of every local authority within the meaning of Part II. of the Housing of the Working Classes Act, 1890, to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and for that purpose to comply with such regulations and to keep such records as may be prescribed by the Board.

The Board have accordingly issued an order making regulations with respect to the manner in which inspection of the district under this section shall be carried out, and with respect to the records to be kept of such inspection. Copies of this order are enclosed.

Under Article I. the Local Authority are to determine their procedure, which is to provide for thorough inspection of the dwelling-houses or localities in the district, and they must also cause to be prepared from time to time a list of dwelling-houses of which early inspection is desirable.

Article II. enumerates the matters in relation to which inspection should be made, and Article III. prescribes the records to be kept of each inspection.

Under Article IV. the Local Authority are to take these records into consideration at each meeting, and to give such directions and to take such action as may be desirable in each case, and a note of such directions is to be added to the records.

By Article V. the Medical Officer of Health is required to include in his Annual Report certain information and particulars as to the inspections made and the results.

By Article VI. it is made the duty of the officers of the Local Authority to observe and execute all lawful orders and directions of the Local Authority in regard to the inspection of the district under section 17 of the Act and under the Regulations.

The Board are aware that many Local Authorities have already instituted a system of inspection under which inquiries are made by the Inspector of Nuisances or Sanitary Inspector in respect of the matters referred to in Article II., the results being recorded in a form which contains information on other points besides those mentioned in the Article. The Board do not suggest that this form should be abandoned or altered, provided that it includes all the matters covered by Article II. The provisions of the Order are necessarily limited to matters to be recorded as the result of inspections under and for the purpose of section 17 of the Act.

By Article 19 (3) of the Orders of 23rd March and 8th December, 1891, relating to Urban and Rural Districts and to London respectively, it is the duty of the Inspector of Nuisances or Sanitary Inspector, by inspection of the District both systematically at certain periods, and at intervals as occasion may require, to keep himself informed in respect of nuisances existing therein which require abatement. The Local Authority will no doubt usually designate the Inspector of Nuisances or Sanitary Inspector as the officer who is to act under Article I. (3) of the Regulations.

It will be open to the Local Authority, if they think fit, to delegate the duty of considering the records to a committee, subject to such directions as they consider necessary.

I am, etc.,

H. C. Monro,

Secretary.

The Clerk to the Local Authority.

APPENDIX F.

(55,916) [19*th November* 1910.]

HOUSING ACTS. FORMS OF ADVERTISEMENT AND NOTICES : IMPROVEMENT SCHEME.

To the several Local Authorities

in ENGLAND and WALES for the purposes of Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, etc., Act, 1909 ;—

And to all others whom it may concern.

WHEREAS by Section 27 of the Housing of the Working Classes Act, 1890 (herein-after referred to as " the Act of 1890 "), which Section is included in Part I. of the Act of 1890, it was enacted as follows :—

> " The confirming authority may by order prescribe the " forms of advertisements and notices under this part of this " Act ; it shall not be obligatory on any persons to adopt such " forms, but the same, when adopted, shall be deemed suffi- " cient for all the purposes of this part of this Act."

And whereas, in pursuance of the said enactment, the Secretary of State and the Local Government Board, as the Confirming Authorities within the meaning of Part I. of the Act of 1890, by the Orders described in the First Schedule to this Order (which Orders are herein-after referred to as " the Orders "), prescribed certain Forms of Advertisement and Notices under Part I. of the Act of 1890 ;

And whereas by an Order of the Privy Council issued in pursuance of Section 2 of the Housing of the Working Classes Act, 1903, and dated the 27th day of February, 1905, all the powers and duties of the Secretary of State under the Housing Acts were transferred to the Local Government Board ;

And whereas the said Section 27 of the Act of 1890 was repealed by Section 75 of the Housing, Town Planning, etc., Act, 1909 (herein-after referred to as " the Act of 1909 "), and by Section 41 of the Act of 1909, which Section is included in Part I. of the Act of 1909, it is enacted as follows :—

" The Local Government Board may by order prescribe " the form of any notice, advertisement, or other document to " be used in connexion with the powers and duties of a local " authority or of the Board under the Housing Acts, and the " forms so prescribed, or forms as near thereto as circum- " stances admit, shall be used in all cases to which those forms " are applicable."

And whereas, by virtue of Section 51 of the Act of 1909, in Part I. of that Act the expression " Housing Acts " means the Act of 1890, and any Act amending that Act, including the Act of 1909;

And whereas it is expedient that, in pursuance of the said Section 41 of the Act of 1909, Forms should be prescribed which shall be used in substitution for the Forms prescribed by the Orders:

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us by the Statutes in that behalf, by this Order do Prescribe the several Forms set forth in the Second Schedule to this Order to be used in connexion with the powers and duties of a local authority under Part I. of the Act of 1890; and We hereby Declare that the said Forms shall be in substitution for the Forms prescribed by the Orders described in the First Schedule to this Order.

FIRST SCHEDULE.

Order of the Secretary of State dated the 5th day of November, 1890, and addressed to the London County Council and to the Commissioners of Sewers of the City of London.

Order of the Local Government Board dated the 2nd day of October, 1890, and addressed to the several Urban Sanitary Authorities for the time being in England and Wales.

SECOND SCHEDULE.

I.

FORM OF ADVERTISEMENT.

HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1909.

Advertisement of an Improvement Scheme.

Notice is hereby given that the [1]

have in pursuance of the powers vested in them for that purpose by Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, etc., Act, 1909, made a Scheme for the improvement of the area [*or* areas] the limits of which are stated in the Schedule hereunder, and which contains [*or* contain] approximately [2]

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at †
and may be seen at all reasonable hours.

SCHEDULE.[3]

The area to which the Scheme relates is bounded as follows :—
On the north by
On the south by
On the east by
On the west by

or

The area to which the Scheme relates is bounded by a line commencing (*set out the entire linear boundary*) :

or

The area to which the Scheme relates consists of the following streets and other places or parts thereof :

Dated this day of , 19 .

Signature of Clerk of Local Authority.....

Directions for filling up this form.

Insert—

[1] Description of the Local Authority.
[2] The aggregate superficial extent of the area or areas.
[3] One of the three alternative forms should be used as may be convenient. If the scheme includes more than one area, the particulars indicated should be given as regards each area.

† *The place deposit must be within the area or in the vicinity thereof. See Section 7 (a) of the Act of* 1890.

II.

FORM OF NOTICE TO OWNERS AND LESSEES.

HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1905

Notice to owner or reputed owner, lessee or reputed lessee, of intention to take lands compulsorily under an Improvement Scheme.

TO [1]

TAKE NOTICE that a petition is about to be presented by the [2] to the Local Government Board in pursuance of Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, etc., Act, 1909, praying that an Order may be made confirming an Improvement Scheme, whereby it is proposed to take compulsorily the lands described in the Schedule hereunder, in which lands you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee.

You are therefore hereby required to return to me on or before the day of next an answer in writing stating whether you dissent or not in respect of the taking of the lands described in the said Schedule.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at † and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands proposed to be taken.	Owner or reputed Owner.	Lessee or reputed Lessee.	Occupier.

Dated this day of , 19 .

Signature of Clerk of Local Authority.....

Directions for filling up this form.

Insert—

[1] Name, residence, or place of business, and description, where known, of owner or reputed owner, lessee or reputed lessee, as the case may require.

[2] Description of Local Authority.

† *The place of deposit must be within the area or in the vicinity thereof. See Section 7 (a) of the Act of* 1890.

‡ "*Lands*" *includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.*

III.

FORM OF NOTICE TO OCCUPIERS.

[HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1909.

Notice to occupier or occupiers (not being owners or reputed owners or lessees or reputed lessees) of intention to take lands compulsorily under an Improvement Scheme.

To [1] the occupier of the land †

or

[To the occupier or occupiers of the house] ‡
which in the Schedule hereunder is described as the lands proposed to be taken.

TAKE NOTICE that a petition is about to be presented by the [2] to the Local Government Board in pursuance of Part I. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, etc., Act, 1909, praying that an Order may be made confirming an Improvement Scheme, whereby it is proposed to take compulsorily the lands described in the Schedule hereunder.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at §
and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands † proposed to be taken.

Dated this day of , 19 .

Signature of Clerk of Local Authority.....

Directions for filling up this form.

Insert—

[1] The name of the occupier.

[2] Description of Local Authority.

† "*Lands*" *includes messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.*

‡ *The alternative address within these brackets is available only where the property to be taken is a house.*

§ *The place of deposit must be within the area or in the vicinity thereof. See Section 7 (a) of the Act of* 1890.

Given under the Seal of Office of the Local Government Board, this Nineteenth day of November, in the year One thousand nine hundred and ten.

[L.S.] JOHN BURNS,
President.

H. C. MONRO,
Secretary.

The Local Government Board issued a circular, dated 21st November, 1910, in which they explained that "Under the terms of section 41 of the Act of 1909 the use of the prescribed forms, or forms as near thereto as circumstances admit, is obligatory in all cases to which those forms are applicable."

Note as to Scotland.

A corresponding Order addressed to Local Authorities in Scotland was issued by the Local Government Board for Scotland and is dated January 10, 1911.

APPENDIX G.

(54,917) [14*th June*, 1911.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

REGULATIONS FOR COMPULSORY PURCHASE OF LAND.

To the several Local Authorities

in ENGLAND and WALES for the purposes of Part III. of the Housing of the Working Classes Act, 1890 ;—

To the several Local Authorities

in ENGLAND and WALES for the purposes of Part II. of the Housing, Town Planning, etc., Act, 1909 ;—

And to all others whom it may concern.

WHEREAS by subsection (1) of Section 2 of the Housing, Town Planning, etc., Act, 1909 (herein-after referred to as " the Act "), it is enacted that a Local Authority may be authorized to purchase land compulsorily for the purposes of Part III. of the Housing of the Working Classes Act, 1890 (in the Act and herein-after referred to as " the principal Act "), by means of an Order submitted to and confirmed by Us, the Local Government Board, in accordance with the First Schedule to the Act, and by subsection (2) of the same Section it is enacted that the procedure under that Section for the compulsory purchase of land shall be substituted for the procedure for the same purpose under Section 176 of the Public Health Act, 1875, as applied by subsection (1) of Section 57 of the principal Act ;

And whereas by subsection (1) of Section 60 of the Act, which Section is included in Part II. of the Act, it is enacted that the responsible authority within the meaning of the said Part of the Act may for the purpose of a town planning scheme be authorized to purchase any land comprised in such scheme compulsorily in the same manner and subject to the same provisions as a Local Authority may be authorized to purchase land situate in an Urban District for the purposes of Part III. of the principal Act as amended by Sections 2 and 45 of the Act, and by subsection (2) of the said Section it is enacted that where land included within the area of a Local Authority is comprised in a town

planning scheme, and the Local Authority are not the responsible authority, the Local Authority may be authorized to purchase that land in the same manner as the responsible authority ;

And whereas by paragraphs (1), (2), (4), (5), (6), (12), and (13) of the First Schedule to the Act it is enacted that—

" (1) Where a local authority propose to purchase land " compulsorily under this Act, the local authority may sub- " mit to the Board an order putting in force as respects the " land specified in the order the provisions of the Lands " Clauses Acts with respect to the purchase and taking of " land, otherwise than by agreement."

" (2) An order under this schedule shall be of no force un- " less and until it is confirmed by the Board, and the Board " may confirm the order either without modification or " subject to such modifications as they think fit, and an " order when so confirmed shall, save as otherwise expressly " provided by this Schedule, become final and have effect " as if enacted in this Act ; and the confirmation by the " Board shall be conclusive evidence that the requirements " of this Act have been complied with, and that the order " has been duly made and is within the powers of this " Act."

" (4) The order shall be in the prescribed form, and shall " contain such provisions as the Board may prescribe for the " purpose of carrying the order into effect, and of protecting " the local authority and the persons interested in the land, " and shall incorporate, subject to the necessary adaptations, " the Lands Clauses Acts (except section one hundred and " twenty-seven of the Lands Clauses Consolidation Act, " 1845) and sections seventy-seven to eighty-five of the " Railways Clauses Consolidation Act, 1845, but subject to " this modification, that any question of disputed compen- " sation shall be determined by a single arbitrator appointed " by the Board, who shall be deemed to be an arbitrator " within the meaning of the Lands Clauses Acts, and the " provisions of those Acts with respect to arbitration shall, " subject to the provisions of this schedule, apply accord- " ingly."

" (5) The order shall be published by the local authority in " the prescribed manner, and such notice shall be given both " in the locality in which the land is proposed to be acquired, " and to the owners, lessees, and occupiers of " that land as " may be prescribed."

" (6) If within the prescribed period no objection to the " order has been presented to the Board by a person interested " in the land, or if every such objection has been withdrawn, " the Board shall, without further inquiry, confirm the " order, but, if such an objection has been presented and " has not been withdrawn, the Board shall forthwith cause " a public inquiry to be held in the locality in which the

" land is proposed to be acquired, and the local authority and " all persons interested in the land and such other persons as " the person holding the inquiry in his discretion thinks fit to " allow shall be permitted to appear and be heard at the " inquiry."

" (12) Where the land is glebe land or other land belonging " to an ecclesiastical benefice, the order shall provide that " sums agreed upon or awarded for the purchase of the " land, or to be paid by way of compensation for the damage " to be sustained by the owner by reason of severance or other " injury affecting the land, shall not be paid as directed by " the Lands Clauses Acts, but shall be paid to the Ecclesi- " astical Commissioners to be applied by them as money paid " to them upon a sale, under the provisions of the Ecclesiasti- " cal Leasing Acts, of land belonging to a benefice."

" (13 In this schedule the expression ' Board ' means the " Local Government Board, and the expression ' prescribed ' " means prescribed by the Board."

NOW THEREFORE, in the exercise of the powers in that behalf, We do, by this Our Order, Direct and Prescribe as follows ; that is to say,—

ARTICLE I.—An Order made by a Local Authority under the First Schedule to the Act (herein-after referred to as " the Compulsory Order ") shall be in the Form set forth in the Schedule hereto, or in a Form to the like effect.

ARTICLE II.—(1) Before submitting the Compulsory Order to Us for confirmation, the Local Authority shall cause the same to be published by advertisement in two successive weeks in one or more of the local newspapers circulating in the district of the Local Authority and in the Parish or Parishes in which the land to which the Compulsory Order relates is situated.

(2) The advertisements shall be headed respectively " First Advertisement " and " Second and Last Advertisement," and the first of the said advertisements shall be published not later than the tenth day after the making of the Compulsory Order.

(3) Each of the said advertisements shall contain in addition to a copy of the Compulsory Order a notice setting out the following particulars :—

(*a*) a statement that any objection to the Compulsory Order must be presented to Us within the period of one calendar month from and after the date of the publication of the second and last advertisement ; and

(*b*) a statement of the period, times, and place or places during and at which the deposited plan referred to in the Schedule to the Compulsory Order may be inspected by or on behalf of any person interested in the land to which the Compulsory Order relates.

(4) The plan referred to in the Schedule to the Compulsory Order shall be deposited by the Local Authority not later than the tenth day after the making of the Compulsory Order at a place convenient for the purposes of inspection, and shall be kept deposited thereat for a period not being less than one calendar month from the date of the publication of the second and last advertisement; and the said plan shall be open for inspection by any person interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The Local Authority shall also make suitable provision for affording to any such person inspecting the said plan any necessary explanation or information in regard thereto.

ARTICLE III.—(1) The Local Authority shall, not later than the tenth day after the making of the Compulsory Order, cause notice thereof to be given to every owner, lessee, and occupier of the land to which the Compulsory Order relates, and every such notice shall include a printed copy of the Compulsory Order, to which shall be appended a notice containing the particulars mentioned in subdivision (3) of Article II. of this Order.

(2) The Local Authority shall furnish a printed copy of the Compulsory Order, free of charge, to any person interested in the land to which the Compulsory Order relates, upon his applying for the same.

ARTICLE IV.—The period within which an objection to a Compulsory Order may be presented to Us by a person interested in the land to which the Compulsory Order relates shall be the period of one calendar month from and after the date of the publication of the second and last advertisement of the Compulsory Order.

ARTICLE V.—(1) The Local Authority shall as soon as practicable after the confirmation of the Compulsory Order cause a printed copy of the Compulsory Order as confirmed to be served on every owner, lessee, and occupier of the land to which the Compulsory Order relates.

(2) A printed copy of the Compulsory Order as confirmed shall be furnished free of charge by the Local Authority to any person interested in the land authorized to be purchased upon his applying for the same, and a copy of any plan to which reference is made in the Compulsory Order as confirmed shall also be furnished by the Local Authority to any such person upon his applying for such copy and paying the reasonable cost of preparing the same.

ARTICLE VI.—Every notice or other document which in pursuance of subdivision (1) of Article III. or of subdivision (1) of Article V. of this Order is required to be given or served by the Local Authority to or on an owner, lessee, or occupier, shall be served :—

(*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent; or

(*b*) by leaving the same at the usual or last known place of abode of such person as aforesaid; or

(*c*) by post as a registered letter addressed to the usual or last known place of abode of such person; or

(*d*) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post as a registered letter addressed to such clerk or secretary at his office.

ARTICLE VII.—This Order may be cited as the Housing, etc. (Form of Compulsory Purchase Order, etc.) Order, 1911.

SCHEDULE.

The* hereby make the following Order —

1. The provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement are, subject to the terms of the Housing, Town Planning, etc., Act, 1909, and of this Order, hereby put in force as respects the purchase by the * of the lands described in the Schedule hereto for the †

2. This Order shall have effect as if there were incorporated therewith, subject to the necessary adaptations, the Lands Clauses Acts (except Section 127 of the Lands Clauses Consolidation Act, 1845), and Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Local Government Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of the First Schedule to the Housing, Town Planning, etc., Act, 1909, apply accordingly.

3.‡ If any of the land described in the Schedule to this Order is glebe land or other land belonging to an ecclesiastical benefice, any sums agreed upon or awarded for the purchase of any such land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

[3] This Order shall come into operation from and after the date of its confirmation by the Local Government Board.

[4] This Order may be cited as the § Order, 19 .

* Here insert title of the Authority making the Order.

† Here insert "purposes of Part III. of the Housing of the Working Classes Act, 1890," or "purpose of [a town planning scheme] under Part II. of the Housing, Town Planning, etc., Act, 1909," as the circumstances require. In the case of a town planning scheme, the name of the Authority who made the scheme and the date or short title of the scheme should be stated.

‡ Insert this Article where the lands described in the Schedule to the Order include glebe land or other land belonging to an ecclesiastical benefice.

§ Here insert a suitable short title.

The SCHEDULE above referred to.

Numbers on Plan deposited at the Offices of the *	Quantity, Description and Situation of the Lands..	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.

Given under the Seal of the*
this day of , 19 .

* Here insert title of the Authority making the Order.

Given under the Seal of Office of the Local Government Board, this Fourteenth day of June, in the year One thousand nine hundred and eleven.

[L.S.] JOHN BURNS,
President.

H. C. MONRO,
Secretary.

The Local Government Board issued a circular, dated 15th June, 1911, in which they state that "By virtue of section 60 of the Act of 1909 the provisions relating to the compulsory acquisition of land for the purposes of Part III. of the Act of 1890 are made applicable where land is required to be purchased compulsorily for the purpose of a town planning scheme. The provisions contained in the order will accordingly apply also to these cases."

Note as to Scotland.

A corresponding Order was issued by the Local Government Board for Scotland and is dated October 20, 1911.

APPENDIX H.

HOUSING, TOWN PLANNING, ETC., ACT, 1909.

CIRCULAR TO TOWN COUNCILS, COUNCILS OF METROPOLITAN BOROUGHS AND DISTRICT COUNCILS.

LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.,
September 8, 1911.

SIR,—

I am directed by the Local Government Board to state that in connection with cases which have come before them under sections 17 and 18 of the Housing, Town Planning, etc., Act, 1909, relating to the making of closing orders and demolition orders and to appeals to the Board against such orders, certain questions have arisen which suggest the desirability of drawing the special attention of the local authority to the following matters.

The forms of closing and demolition orders were prescribed by the Board's Order of January 11, 1910, and difficulties have arisen in certain cases through the prescribed forms not having been followed. One error which has been made in several cases has been the omission of the Note to the prescribed forms giving particulars of statutory provisions as to the rights of appeal possessed by the owners of the dwelling-house affected. In a recent case in the High Court the omission of that Note led to an injunction being granted restraining further proceedings under a closing order.

The prescribed forms of these orders include an address "To . . . owner of the dwelling-house . . . ," and require the names of the owners to be inserted where known. The names of all persons who are owners within the meaning of the term as defined in section 49 (2) of the Act of 1909 should, if possible, be included in this address, and the local authority should be in a position to show in each case that diligent inquiry has been made to ascertain the facts as to ownerships. With a view, however, to avoid any question arising out of the failure to include every owner in the address, the prescribed form may be varied so that the address shall be "To A.B and C.D. or other the owner or owners of the dwelling-house. . . ." The order served on each owner should bear the seal of the local authority and be signed by the clerk.

A closing order or demolition order should not as a general rule extend to more than one dwelling-house.

As regards the service of a closing order or demolition order, it will be observed that section 17 (3) and section 18 (4) of the Act of 1909 require service of "notice" of the order forthwith on every owner, and the right of appeal is given to an owner within a prescribed time after "the order is served upon him." No form of notice was prescribed by the Board, it being contemplated by the Act that the order should be served on each owner. It is most important that there should be no failure to comply with the requirement as to service of notice, and the provisions contained in section 49 of the Housing of the Working Classes Act, 1890, and section 13 of the Housing of the Working Classes Act, 1903, as to service of notices, should be carefully observed. As indicated above, diligent inquiry as to ownerships should be made before the order is made by the local authority, but, though the information so gained may be complete in most instances, there may be cases in which some ownership within the strict meaning of the Act may escape notice. It is therefore advisable that in all cases the procedure authorized by sub-section (2) of section 49 of the Act of 1890 should be adopted as a matter of precaution in addition to direct service on all owners that can be found as the result of diligent inquiry.

Under section 49 (3) of the Act of 1890 notice served upon the agent of the owner is to be deemed notice to the owner, but the person to be addressed in a closing order or demolition order should be the owner and not the agent of the owner.

This circular will be placed on sale, so that copies may shortly be obtained from Messrs. Wyman & Sons, Limited, Fetter Lane, E.C., either directly or through any bookseller.

I am, Sir,

Your obedient Servant,

H. C. MONRO,
Secretary.

The Clerk to the Local Authority.

APPENDIX I.

LOCAL INQUIRIES.

Instructions to be observed by Inspectors of the Local Government Board who hold local inquiries in relation to Appeals to which Section 39 of the Housing, Town Planning, etc., Act, 1909, applies.

SECTION 39 of the Housing, Town Planning, etc., Act, 1909, enacts that the Rules to be made by the Local Government Board under that section with reference to appeals to the Board under Part I. of that Act shall provide that the Board shall not dismiss any appeal without having first held a public local inquiry. The Rules made by the Board on January 11, 1910, accordingly include the following provision, namely:—"Rule 9. The "Local Government Board shall not dismiss an appeal without "having first held a public local inquiry."

Part I of the Act allows of appeals to the Board in the following cases:—

(*a*) Under section 15, subsection (6), the landlord of a house to which sections 14 and 15 apply may appeal against any notice served upon him by the local authority under section 15 requiring him to execute works to make the house reasonably fit for human habitation, and against any demand for the recovery of expenses incurred by the local authority in the execution of works on the default of the landlord or any order made by the local authority with respect to those expenses under section 15:

(*b*) Under section 17, subsections (3) and (6), an owner of a dwelling-house may appeal against a closing order made by the local authority in regard to the dwelling-house, or against a refusal of the local authority to determine a closing order;

(*c*) Under section 18, subsection (4) an owner of a building, being or being part of a dwelling-house, may appeal against an order made by the local authority for the demolition of the building; and

(*d*) Under section 31, subsection (2), the overseers of any contributory place proposed to be charged may appeal against an apportionment made under the section by a rural district council of the expenses incurred by the council in the execution of Part III. of the Housing of the Working Classes Act, 1890.

Under section 39 the Board may on any such appeal make such order in the matter as they think equitable and any order so made will be binding and conclusive on all parties; and the Board are authorized at any stage of the proceedings on appeal, and are required if so directed by the High Court, to state in the form of a special case for the opinion of the Court any question of law arising in the course of the appeal.

The following instructions are issued by the Local Government Board for the guidance of the Inspectors in cases where a public local inquiry is held on an appeal to which section 39 of the Housing, Town Planning, etc., Act, 1909, applies.

1. The inspector should at the commencement of the proceedings request the clerk or other person appearing on behalf of the local authority to read the notice of the inquiry and to furnish evidence that printed notices of the inquiry have been duly posted in accordance with Rule 9 of the Rules made by the Board with reference to appeals.

2. The inspector should take the names and descriptions of the persons representing the appellant and the local authority and of their witnesses. He should then state publicly that after hearing those witnesses he will be prepared to hear the evidence of any persons who satisfy him that they are interested in the subject-matter of the inquiry.

3. The inspector has power to summon persons for the purpose of being examined before him on any matter pertaining to the subject-matter of the inquiry, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings or copies of the same in any wise relating to such matter and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of the local authority. This power is given by section 21 of the Poor Law Amendment Act, 1847, as applied by section 296 of the Public Health Act, 1875, and section 85 of the Housing of the Working Classes Act, 1890.[1]

Under the same provisions the inspector has power to administer an oath. To what extent he will avail himself of this power is left to his judgment, but he should do so in all cases where the circumstances of the case appear to render this course desirable. In place of administering an oath it is open to the inspector to require a witness to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be examined. Information as to the administration and taking of an oath will be found in the Oaths Acts 1888 and 1909, and the expression "oath" is defined in section 3 of the Interpretation Act, 1889.[2]

[1] *See* Note A.
[2] *See* Note B.

4. The appellant or his representative should be asked to state fully the grounds of the appeal and to call any witnesses he may desire to call. After each witness has been examined the representative of the local authority should be allowed to cross-examine, and the appellant or his representative should subsequently be permitted to re-examine if he desires to do so.

At any stage of the proceedings the inspector shall put such questions to the witnesses as he considers necessary.

After the appellant and his witnesses have been heard, the case for the local authority should be stated by their representative, unless he elects to call his witnesses first. The witnesses of the local authority should next be examined, cross-examined, and re-examined. The appellant or his representative should then be allowed to reply on the whole case, if he wishes to do so.

The inspector must take a careful note of the evidence of each witness.

5. If the inquiry relates to an appeal under section 15, section 17, or section 18 of the Act the inspector, either during or after the inquiry, shall visit and inspect the premises to or in respect of which the appeal relates or is made, and he shall invite the parties to the appeal to accompany him. If, however, the inquiry is held in regard to an appeal against a demand for the recovery of expenses or an order with respect to those expenses under section 15 (6) the inspector need not make such visit and inspection unless the circumstances appear to him to require it or unless either party to the appeal desire it.

6. In making his Report to the Board the inspector shall furnish a complete statement of the proceedings at the inquiry. The Report should contain—

(i) a clear statement as to the subject of appeal;

(ii) a full and impartial statement of the evidence on both sides given by each witness at the inquiry;

(iii) an account of the inspection of the premises, if any, made by the inspector, a list of the persons who accompanied him on such inspection, and a statement of the result of such inspection; and

(iv) the conclusions arrived at by the inspector and his recomendation to the Board.

7. In connexion with his recommendation the inspector should bear in mind that by the terms of section 39 (1) of the Act the Board are empowered to confirm, vary, or quash any notice, order, or apportionment in regard to which the appeal is made. It is therefore desirable that the inspector should state in his recommendation whether the circumstances require a modification of any such notice, order, or apportionment.

8. If evidence is given on oath by any witness, it should be signed by him and forwarded by the inspector to the Board with the Report; as also should any declarations made by witnesses not on oath. In any such case it is desirable that the notes of such evidence should be written in the first person and that they should be read over to the witness before being signed by him.

H. C. MONRO,
Secretary.

LOCAL GOVERNMENT BOARD,
March 23, 1910.

NOTE A.

POOR LAW AMENDMENT ACT, 1847, 10 & 11 VICT., CH. 109.

Section 21.—The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the commissioners, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements or hereditaments, not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter, upon oath, which each of the said inspectors shall be empowered to administer, or, instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purpose as aforesaid shall be obeyed by all persons as if such summons had been the summons and order of the commissioners, and the non-observance thereof shall be punishable in like manner; and the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first recited Act[1] are now payable: Provided always, that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode.

PUBLIC HEALTH ACT, 1875, 38 & 39 VICT., CH. 55.

Section 296.—Inspectors of the Local Government Board shall for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

[1] Poor Law Amendment Act, 1834 (4 & 5 Wm. IV. c. 76).

SECTION 85 OF THE HOUSING OF THE WORKING CLASSES ACT, 1890, 53 & 54 VICT., CH. 70, AS AMENDED BY THE HOUSING, TOWN PLANNING, ETC., ACT, 1909, 9 EDW. 7, CH. 44.

Section 85.—(1) For the purposes of the execution of their powers and duties under this Act the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board or confirming authority engaged in the inquiry, shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board or confirming authority may direct, and that Board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.

(2) Sections two hundred and ninety-three to two hundred and ninety-six and section two hundred and ninety-eight of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board or any local inquiry which that Board cause to be held in pursuance of any part of this Act.

NOTE B.

The form of oath to witnesses, now in use in the Courts, is—

"I swear by Almighty God that I will speak the truth, the whole truth, and nothing but the truth. So help me God."

OATHS ACT, 1909, 9 EDW. 7, CH. 39.

Section 2.—(1) Any oath may be administered and taken in the form and manner following:—

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words "I swear by Almighty God that . . .", followed by the words of the oath prescribed by law.

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

Section 3.—In this Act the word "officer" shall mean and include any and every person duly authorized to administer oaths.

OATHS ACT, 1888, 51 & 52 VICT., CH. 46.

Section 1.—Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary

to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath; and if any person making such affirmation shall wilfully, falsely and corruptly affirm any matter or thing which, if deposed on oath, would have amounted to wilful and corrupt perjury, he shall be liable to prosecution, indictment, sentence, and punishment in all respects as if he had committed wilful and corrupt perjury.

Section 2.—Every such affirmation shall be as follows:—"I, A.B., "do solemnly, sincerely, and truly declare and affirm," and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Section 4.—Every affirmation in writing shall commence "I, "of , do solemnly and sincerely affirm," and the form in lieu of jurat shall be "Affirmed at ,this "day of , 18 . Before me."

INTERPRETATION ACT, 1889, 52 & 53 VICT., CH. 63.

Section 3.—The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

APPENDIX K.

The following instructions have been issued by the Local Government Board as to proceedings under the Housing of the Working Classes Act, 1890 :—

IMPROVEMENT SCHEMES.

Instructions as to applications to the Local Government Board for the Confirmation of Improvement Schemes under Part I. of the Housing of the Working Classes Act, 1890, as amended by section 5 of the Housing of the Working Classes Act, 1903, and sections 22, 23, 24 and 27 of the Housing, Town Planning, etc., Act, 1909.

1. The application must be made by a petition, under the seal of the local authority and containing the particulars required by section 8 of the Act of 1890.

2. The petition should be accompanied by the following documents and particulars :—

(*a*) A copy of the official representation.

(*b*) Two copies of the improvement scheme.

(*c*) Two copies of the estimate of the cost of carrying the scheme into effect.

(*d*) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working classes who will be displaced, the approximate rents paid by such persons, and the number of such persons for whom, and the place or places at which, dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reason for this course must be stated, and the distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area included in the scheme, and the place or places at which dwelling accommodation for the working

classes is to be provided, may be dealt with so as to carry out the purposes of the Acts and the proposed scheme.

(*e*) Maps showing (1) the area included in the official representation, and (2) the area included in the improvement scheme (which maps are hereinafter referred to as the "deposited maps"), (3) any site where dwelling accommodation is to be provided which is not within the area included in the scheme, and (4) the position of each site in relation to the area included in the scheme; and a book of reference to the deposited maps in duplicate. The several properties should be numbered consecutively on the deposited maps. Each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies. The book of reference should be prepared *on the ground* at the same time as and in conjunction with the deposited maps, each parcel of land being numbered to correspond with the deposited maps, and being described so as to show clearly what properties are covered by each number.

(*f*) Particulars showing, by reference where practicable to the numbers of the properties on the maps, (1) the area included in the official representation; (2) any lands (*a*) excluded from such area by the local authority, or (*b*) included in it by the local authority, under section 6 (1) (*a*) of the Act of 1890, as amended by the Act of 1909, and the reasons for such exclusion or inclusion; (3) any lands included for widening existing approaches to the unhealthy area or otherwise for opening out the same for purposes of ventilation or health, under section 6 (1) (*b*); (4) the proposals under section 23 of the Act of 1909 as to the closing or diversion of any highways or any other matter; and (5) the lands proposed to be taken compulsorily.

(*g*) A statutory declaration, specifying in which of the modes mentioned in section 7 of the Act of 1890 the notices have been served, and the names of the persons so served. This declaration should be made by the person who served the notices.

(*h*) A statutory declaration made by the clerk to the local authority, showing that all the other requirements of section 7 of the Act of 1890, as amended by section 5 (1) of the Act of 1903, have been complied with, and that the petition states the names of all the owners or reputed owners and lessees or reputed lessees who have dissented in respect of the taking of their lands. Copies of the newspapers containing the advertisements, and also of the form of notice served on the owners, lessees and occupiers, should be annexed to the declaration as exhibits.

3. Every statutory declaration must be made or sworn before a Justice of the Peace or a Commissioner for Oaths, and must be stamped with a half-crown *impressed* stamp, and each exhibit to a statutory declaration must be marked by the declarant, and by the Justice of the Peace or Commissioner for Oaths, as the case may be, in the usual way.

N.B.—It is particularly requested that the petition, declaration, notices and other documents may be on foolscap paper of the usual size.

LOCAL GOVERNMENT BOARD,
WHITEHALL,
June, 1910.

RECONSTRUCTION SCHEMES.

Instructions as to Applications to the Local Government Board for Orders sanctioning Reconstruction Schemes under Part II. of the Housing of the Working Classes Act, 1890, as amended by section 7 of the Housing of the Working Classes Act, 1903, and sections 23, 24 and 46 of the Housing, Town Planning, etc., Act, 1909.

The application must be made by a petition, under the seal of the local authority, and should be accompanied by the following documents and particulars :—

(1) A copy of each order for demolition, affecting the reconstruction scheme, which may have been made in pursuance of Part II. of the Act of 1890, as amended by the Act of 1909 [see section 39 (1) (*a*) of the Act of 1890].

(2) A copy of any report of a committee or of the medical officer of health of the local authority relating to the area and the proposed scheme.

(3) A copy of the resolution of the local authority under section 39 (1) of the Act of 1890.

(4) Two copies of the scheme.

(5) Two copies of the estimate of the cost of carrying the scheme into effect.

(6) Particulars of the scheme, giving the extent and total population of the area to which it relates, the number of persons of the working classes who will be displaced, the approximate rents paid by such persons, and the number of such persons for whom, and the place or places at which dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reason for this course must be stated, and the distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area

included in the scheme, and the place or places at which dwelling accommodation for the working classes is to be provided, may be dealt with so as to carry out the purposes of the Acts and the proposed scheme.

(7) Maps showing (1) the area to which the scheme relates (hereinafter referred to as the "deposited map"), (2) any site where dwelling accommodation is to be provided which is not within the area included in the scheme, and (3) the position of the site in relation to the area included in the scheme; together with a book of reference to the deposited map in duplicate. The several properties should be numbered consecutively on the deposited map. Each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies. The book of reference should be prepared *on the ground* at the same time as and in conjunction with the deposited map, each parcel of land being numbered to correspond with the deposited map, and being described so as to show clearly what properties are covered by each number.

(8) Particulars, showing by reference where practicable to the numbers of the properties on the deposited map, (A) any neighbouring lands included in the area comprised in the scheme under section 7 of the Act of 1903, and the reasons for such inclusion; (B) any lands included for widening existing approaches to the area or otherwise for opening out the same for purposes of ventilation or health, under section 6 (1) (*b*) of the Act of 1890, as applied by section 23 (2) of the Act of 1909; (C) the proposals under section 23 (1) of the Act of 1909 as to the closing or diversion of any highways or any other matter; and (D) the lands, if any, proposed to be taken compulsorily.

(9) A statutory declaration as to the service of the notices required to be given under subsection (2) of section 39 of the Act of 1890, specifying as regards every owner or reputed owner, lessee or reputed lessee, and occupier, in which of the modes mentioned in section 7 (*c*) (*d*) of the Act the notices have been served. The statutory declaration must be made or sworn before a Justice of the Peace or a Commissioner for Oaths by the person who served the notices, and must be stamped with a half-crown *impressed* stamp, and each exhibit to a statutory declaration must be marked by the declarant, and by the Justice of the Peace or Commissioner for Oaths, as the case may be, in the usual way. Copies of the form of notice served on the owners, lessees and occupiers, should be annexed to the declaration as exhibits.

(10) A statement of the names of all the owners or reputed owners and lessees or reputed lessees who have dissented in respect of the taking of their lands.

N.B.—It is particularly requested that the petition, declaration, notices and other documents may be on foolscap paper of the usual size.

LOCAL GOVERNMENT BOARD,
WHITEHALL,
July, 1910.

LOANS FOR LAND AND LODGING HOUSES.

Information and particulars to be supplied to the Local Government Board in connexion with an application for sanction to borrow money for the acquisition of land and the erection of lodging houses for the working classes under Part III. of the Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Act, 1900, the Housing of the Working Classes Act, 1903, and the Housing, Town Planning, etc., Act, 1909.

Note.—The expression "lodging houses for the working classes" includes separate houses or cottages, whether containing one or several tenements, and the expression "cottage" may include a garden of not more than one acre. (*Section* 53 *Act of* 1890; *sections* 50 *and* 75 *Act of* 1909.)

The Board should be furnished with:—

1. A copy of the resolution of the Council authorizing the application.

2. A map of the borough or district showing the position of the land to be acquired or the site on which the houses are proposed to be erected. In the case of a rural district the map need not extend beyond the contributory place or places in which the houses are to be erected.

3. A plan of the land and its immediate surroundings drawn to a large scale, and full information as to the tenure of the land, as to any covenants affecting its use, and as to the arrangements proposed for its acquisition. If the land is to be acquired by purchase or on lease it should be stated whether a provisional agreement has been entered into. If the land is already vested in the Council for a purpose other than the erection of houses under Part III. of the Act of 1890, a resolution should be passed by the Council applying to the Board (or, in the case of a Rural District Council, to the County Council) for consent to its appropriation under section 57 (3) of the Act of 1890, and a copy of such resolution should be sent to the Board in a case in which their consent is required, to gether with a duplicate copy of the plan of the land. If consent is given by the County Council to the appropriation of land under the section a copy of the consent should be sent to the Board.

4. (*a*) Plans, sections and elevations of the proposed houses, together with plans showing the drainage arrangements and plans of any street works.

(*b*) A statement giving full information as to the water supply available or to be provided, with particulars and plans of any works of water supply to be executed in connexion with the houses.

(*c*) A short description of the houses to be erected, stating the nature of the materials to be used in the construction, especially as regards the walls and roofs.

5. A detailed estimate of the cost to be incurred, and a statement showing how the total sum proposed to be borrowed is made up, indicating separately the amount required for acquisition of land, erection of houses, street works, sewers in streets, water supply and fencing. As regards the cost of the erection of the houses, the Board in the first instance will be satisfied with a statement as to the cubic contents and the price per foot cube, but if the proposals involve a considerable expenditure the Board may find it desirable to ask for priced bills of quantities. Suitable forms for the estimate for street work and sewers may be obtained by application to the Board, where such works are contemplated.

6. A certificate, signed by the Surveyor to the Council, to the effect that the plans and proposals comply in every respect with the byelaws or any statutory provisions as to new buildings and streets in force in the borough or district.

7. A statement, in the accompanying [1] Form D. 18 (*a*), of the estimated annual receipts and expenditure in respect of the houses, information being given as to the rent proposed to be charged for each house or type of house.

8. In the case of a borough or urban district, information in regard to the assessable value of the borough or district, and in the case of a rural district information as to the rateable value of the district for the purposes of the Poor Rate.

9. Information as to the total amount of debt outstanding (*a*) under the Housing of the Working Classes Acts, 1890 to 1909, or Acts repealed by those Acts, and (*b*) under other provisions.

LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.,
May, 1911.

[1] Copies of the prescribed form can be obtained on application to the Local Government Board.

APPENDIX L.

THE HOUSING OF THE WORKING CLASSES ACTS, 1890 TO 1909.

MEMORANDUM WITH RESPECT TO THE PROVISION AND ARRANGEMENT OF HOUSES FOR THE WORKING CLASSES.

1. **Scope of Memorandum.**—The Local Government Board, in connexion with schemes and proposals submitted to them by local authorities in pursuance of Parts I., II., and III. of the Housing of the Working Classes Act, 1890, as amended by subsequent Acts, have had occasion to consider the principles which should be observed in the construction of houses for the working classes, when these are provided either by a local authority or by other bodies or persons under grants, leases, or contracts to which the local authority are a party.

In this memorandum the Board have summarized their views upon the more important of these principles so far as they are applicable to the erection of separate houses or cottages (whether detached, semi-detached, or in rows or terraces) and of tenement dwellings in small houses.

2. **Standard of Construction.**—In designing houses for the working classes the first consideration is that they shall meet the reasonable needs of the class of persons whom it is proposed to accommodate; and, while it is desirable that simplicity of design and economy in construction and general arrangements should be aimed at, it would be well to bear in mind that houses erected by a local authority ought generally to be such as will be a model or standard for houses for the working classes which may be erected by private persons.

Moreover, if a local authority propose to borrow money to defray the cost of the erection of houses, the Board in fixing the period for the repayment of the loan could not allow the maximum period adopted by them for this purpose, namely, 60 years, unless the houses were to be built substantially.

As a general rule, therefore, the standard of construction should in the Board's opinion be such that, with only a moderate annual outlay for repairs, the houses should be capable of being maintained in a state in all respects fit for human habitation for a period of at least 60 years.

Special circumstances may exist in some cases rendering it desirable for the local authority to construct houses of a less permanent character and to repay the loan in a much shorter period than 60 years. The saving effected in such a case in the

cost of the erection might be such that a loan for the shorter period would not involve a larger annual outlay in respect of loan charges than if the houses had been constructed more substantially and a loan for the greater cost of construction obtained for the full period of 60 years. In considering this point it is to be borne in mind that, taking interest at 3½ per cent., an annuity of £6 0*s.* 4*d.* would repay a loan of £150 in 60 years, £141 in 50 years, £128 in 40 years, or £110 in 30 years.

3. **Class of Persons for whom Accommodation is to be Provided.**—As a general rule experience shows that houses suitable for the accommodation of persons of the better paid working class community (who can afford to pay a rent which will provide a fair return on the capital employed) are more likely to be provided by private enterprise than houses at low rents which are necessary for the accommodation of the poorer classes. It will therefore frequently be the case that the efforts of the local authority will be directed mainly to the provision of houses of the latter class. This has been borne in mind in connexion with the suggestions in this memorandum.

4. **Types of Houses most Suitable.**—The type of dwelling which may perhaps be regarded as the most suitable in ordinary circumstances is the self-contained house, either detached, semi-detached, or in rows or terraces. This type is generally more popular than the tenement dwelling contained in large blocks, and has advantages in respect of health and comfort which are not shared by the latter. Occasionally there may be a demand for accommodation of a limited character, *e.g.*, accommodation for newly married couples or for aged persons without a family, and in such cases it may be desirable to meet the demand by the provision of two-storey houses consisting of two self-contained dwellings; but, generally, it would seem desirable to avoid, where practicable, the erection of blocks of buildings containing a series of tenements.

5. **Number and Arrangement of Buildings on the Site.**—(*a*) *Generally.*—The arrangement of houses on the site and to some extent the design of the houses will depend upon the size, situation, and character of the land, but the site should be so utilized as to secure ample open space in connexion with the houses and the best possible aspect for the living rooms Overcrowding of houses on a site should be avoided, and care must of course be taken to comply with any byelaws or local provisions in force in regard to new streets or open spaces in connexion with buildings.

On the question of the number of houses to be erected on a site, the local authority will doubtless consider it necessary to have regard to the cost of the size and the extent to which street works will be necessary; but it would be well to bear in mind that the annual charges in respect of a loan for the land, spread over the maximum period of 80 years, would in most cases constitute a comparatively small proportion of the total annual cost of pro-

viding the houses. On the basis of 10 houses to the acre and land at £100 per acre, the loan charges per house for land-purchase would be less than 2*d.* a week. If the land cost £500 per acre the loan charges per house would be less than 9*d.* a week.

(*b*) *Building in Rows: Back Streets.*—Where the houses are built in rows, it is desirable that they should be set back from the street line, so as to allow small gardens or forecourts to intervene between the houses and the street.

It is also undesirable that long rows of houses without a break should be constructed; and, as a rule, the number of houses in a continuous row should not exceed ten or twelve. Long rows are open to objection, not only because overcrowding of houses on the site may be the result, but also because they give a monotonous and depressing appearance and prevent easy intercommunication between streets.

Where houses are erected in rows, back streets may be necessary for the removal of house refuse and delivery of coals, goods, etc., and for the laying of sewers. Though back streets, if not properly controlled and lighted, may be a source of nuisance, they have the advantage, in addition to their use for sanitary purposes, of affording a second means of access to the dwellings, thereby saving objectionable traffic through the living rooms.

(*c*) *Semi-detached Cottages.*—In areas where land is less costly the dwellings will with advantage be built in pairs or singly, so as to secure better light and ventilation and larger gardens. Larger ground area and frontage will, as a rule, be more often possible in rural areas than in urban areas, and where large gardens are provided and a slightly increased rent is charged the tenants should be able to secure some return in the form of garden produce, etc.

(*d*) *Other Arrangements of Houses on Site.*—" Where the byelaws admit, it may be desirable to consider other arrangements of streets and buildings which may reduce the expenditure on land and on street construction, *e.g.* (1) the formation of groups of houses on back land, access to the houses being either from comparatively narrow streets if the houses are set well back from the street line and if the streets are not intended or likely to become important thoroughfares, or from streets of full width of which portions might be turfed or planted with trees; (2) the grouping of a number of houses round an open space which would serve as a recreation ground for the occupants of the houses (see section 11 of the Housing of the Working Classes Act, 1903); and (3) the formation of the street which will be the principal means of approach at the back of the houses, leaving a stretch of garden ground between the fronts of the houses and a footway giving access to those fronts.

(*e*) *Frontage of Houses.*—In the laying out and development of sites for building, the execution of the necessary street works is frequently a source of heavy expense, and there is a tendency, especially where the streets are wide and of costly construction,

to make the greatest use of the frontage. As a result houses are sometimes built with an unduly narrow frontage, the necessary internal space being obtained by making the houses deep from front to back, or with projections at the back. These methods of construction interfere with the due access of light and air to the rooms, and in order to avoid these objections the frontages should not be unduly restricted. In the case of houses containing three bedrooms on the first floor it is desirable that the frontage should in no case be less than 16 feet.

6. **Accommodation to be Provided and Arrangement of Interior and Outbuildings.**—(*a*) *Generally.*—The house, as previously stated, should be designed to meet the reasonable needs of the prospective occupants, and the internal arrangements will no doubt be influenced to some extent by custom of the locality and by the habits of the population. Although the actual arrangement of the rooms may not lend itself to any great variety of planning, the dimensions of the rooms, and the arrangement of doors, windows, fireplaces, etc., need careful attention, and some suggestions in regard to these matters are made under the appropriate headings below. In rural districts the necessary accommodation may sometimes be conveniently arranged in a one-storey cottage, but in most cases it will usually be found more economical to build two-storey houses.

(*b*) *Simple Type of House.*—The type of dwelling adapted to the ordinary working class family of, say, five to seven persons should comprise a living-room, scullery, food store, three bedrooms, and the necessary conveniences and out offices. In such a house the ordinary necessities would be met by the following arrangements.

Living Room.—The living-room, being used by all the family in common, ought to be as large and commodious as possible. It should have an area of about 180 square feet, and should contain a good cupboard and dresser, and a kitchen range with a boiler for hot water supply.

Scullery and Bath.—The scullery should have an area of 80 to 100 square feet, and should be fitted with a small range or open fire, or with a gas stove, so that cooking may be done here in the summer, when the warmth of the fire is not needed in the living-room.

A bath, fitted with hinged top to form a table when not in use, can advantageously be fixed in the scullery, hot water being supplied to the bath and sink from a copper in the scullery, from a tank connected to a small boiler in the kitchen range, or from a copper heated by the kitchen range. Baths, which need not necessarily be of the full size, should be of vitreous enamelled iron, and should not be encased.

The provision of a covered space outside the scullery, in which washing, etc., can be done, and in which the copper can if desired be placed, will be found a convenient arrangement.

Food Store.—The food store should be of a size sufficient to accommodate a week's supplies. If made unduly large it would offer facilities for use for other purposes, and this is not desirable. It should be well lighted and ventilated by a separate window opening into the external air, and, in order that it may be kept cool, should not be placed so as to adjoin any fireplace or chimney flue. These precautions are especially necessary where the store is actually within the living-room.

Bedrooms.—Bedrooms should be as large and airy as practicable. It is desirable that one of the rooms should have a floor area of at least 120 square feet, and preferably 144 square feet, and that a second room should have a floor area of about 100 square feet. The third may be smaller. Bedrooms which cannot be provided with a fireplace should have special ventilation. This may be provided by means of fixed louvres over the door, and the door should be at the opposite end of the room from the window. The doors, windows, and fireplaces in the bedrooms should be arranged so as to secure convenient spaces for the bed and furniture and to ensure the freest circulation of air.

Closet Accommodation.—Separate accommodation should be provided for each house, and the entrance to it should be placed outside the house. A water-closet may be placed close to or built as part of the house, and access to the entrance should be under cover if possible. If an earth-closet is provided it should be placed at some distance from the house.

Coal Store.—A store for coal and fuel should be provided, preferably outside adjoining the water-closet or with an entrance from the scullery.

Yard.—Any provisions in force in regard to the paving of yards or open spaces must be complied with, and in any case it is desirable that there should be a paved or concreted area of at least 100 square feet immediately adjoining the back of the house.

Height of Rooms.—The height of the rooms need not exceed 8 feet 6 inches, and 8 feet may suffice with good ventilation.

(*c*) *Staircases.*—The staircase should be arranged independently of the living-rooms in order to avoid the possibility of vitiated air being drawn to the rooms above. The staircase should be well lighted and ventilated, should be furnished with a handrail, and be of an easy gradient, with risers not exceeding eight inches, " winders " being avoided if possible.

(*d*) *Cellars.*—Unless special circumstances necessitate their provision, it is not desirable that cellars should be provided. They add substantially to the cost of a house, and apart from dangers that may arise from damp or ground air, they are liable to be made receptacles for rubbish and to become a nuisance.

(*e*) *Windows.*—The window area of each room should not be less than one twelfth of the floor area of the room ; the windows should be made to open, and should be so placed as to ventilate

the upper as well as the lower portions of the room, and at the same time be sufficiently low down to enable children to see out of them. A good and inexpensive form of window is that of the ordinary casement type, with opening lights above a transom.

7. **Materials: Walls: Floors: Doors.**—The materials of which the houses should be constructed will vary according to the locality. Brickwork, covered externally with rough cast or cement, is an economical form of construction, though of not such lasting quality as plain faced brickwork. Half-brick walls which carry the floor joists should be built in cement. Walls of habitable rooms should be finished internally in plaster, sculleries, larders, outbuildings, etc. being pointed and lime whitened.

Floors of living-rooms and bedrooms should be constructed of deal flooring, those of sculleries and outbuildings being of solid concrete finished in cement. The floors of living-rooms can be constructed of deal boards either on joists or laid on concrete and nailed to fillets embedded in the concrete, but care must be taken that the concrete is absolutely dry before the boards are fixed. A layer of asphalte beneath the boards is desirable. Red Staffordshire quarries bedded on concrete make a serviceable and clean flooring.

Strongly made ledged and braced doors are preferable to panelled doors of inferior quality.

8. **Compliance with Local Byelaws and Statutory Provisions.**—The observations or suggestions in this memorandum must be read as subject to byelaws in force, and care must be taken to comply with local byelaws and statutory provisions in force in the district relating to streets, open spaces, and new buildings.

LOCAL GOVERNMENT BOARD,
WHITEHALL,
July, 1911.

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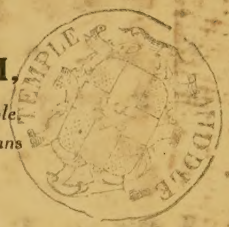

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